George J. Eicher
621 S. W. Alder Street
Portland, Oregon 97205

(503) 228-7181

1. To review the resources of the Quinault Indian Reservation in respect to the management by the Bureau of Indian Affairs of the forests thereon as related to the fish in the streams thereof.

2. To ascertain the facts relevant to the plaintiffs' claims that the Bureau of Indian Affairs failed to require the loggers under the two long-term timber contracts to log in a manner so as not to damage streams and fisheries and permitted the logging contractors to let slash accumulate so as to clog, silt, and heat the rivers and streams with consequent damage to the fisheries. The Toholah Unit Contract is dated April 26, 1950, and runs to April 1, 1969. The Crane Creek Contract of June 18, 1952, extends to April 1, 1986.

3. The consultant will visit and examine the reservation at his expense at such times and in such manner as to assure he will be personally familiar with the reservation in determining whether the logging operations unjustifiably created conditions unduly adverse to fish as a natural resource of the reservation.

4. The report must contain all pertinent data collected in the course of the consultant's investigation and study which would be necessary to substantiate his conclusions. All factual statements should be adequately documented.

5. The consultant's research, study and analysis shall include, but not be limited to, examination of the relevant data of:

a. The United States Bureau of Sport Fisheries and Wildlife at Tumwater, Washington, and the hatchery at Cook Creek.

b. The United States Geological Survey at Tacoma, Washington, particularly the stream gaging stations on the Queets and Quinault Rivers on the reservation.

c. The University of Washington Project at Clearwater, Washington.

d. The project of the Federal Economic Development Administration on the reservation.

e. The work of the fisheries biologist employed by the contractor logging the Crane Creek Unit.

f. The records of the Bureau of Indian Affairs in the Agency Office at Hoquiam, Washington, the superintendency office in Everett, Washington, and the area office in Portland, Oregon, including the Bureau's soil survey of the reservation.

6. The consultant shall confer with other experts retained by the defendant so as to coordinate his work with theirs.

7. The consultant shall compare the management of the forests on the reservation by the Bureau of Indian Affairs as relating to fish with the management of national, state, and private industry forests in which logging operations were being conducted in forests containing fish and timber similar to the Quinault forests during the times of which the plaintiffs complain. The purpose of such comparison will be to determine and report whether the Bureau of Indian Affairs management of the Quinault forests as pertaining to anadromous fish in the streams was in reasonable conformity with the then current state of the art in Western Washington.

IN THE UNITED STATES COURT OF CLAIMS

HELEN MITCHELL, et al., Plaintiffs, v. UNITED STATES OF AMERICA, Defendant.	)	Docket Nos. 772-71 - 775-71

DIGEST OF DEFENDANT'S EXHIBITS

Ex. No.	Date	General Description of Exhibit	Reference, Document, Volume Pages, Etc.
300	1946	Description of top run lead deposits.	"Geological Aspects of Prospecting and Areas for Prospecting in the Zinc-Lead District of Northwestern Illinois" by H. B. Willman, R. R. Reynolds and Paul Herbert, Jr. Report of Investigations No. 116, Illinois State Geological Survey, pages 13-19.
301	1970	Maps of the lead region in southwest Wisconsin and northwest Illinois.	Series of maps and overlays prepared by Dr. Thomas P. Field, Professor of Geography, University of Kentucky.

Data Sent to Dr. Robert E. Ficken: 1-29-72 & 1-30-72
and Dr. Harold K. Steen

1. Reforestation Issue
2. Stand Improvement Issue
3. Cutting Requirements Issue
4. Excerpt: Annual Report of the Commissioner of Indian Affairs, 1932
5. (Same) - 1931
6 (Same) - 1929
7. (Same) - 1923
8. (Same) - 1922
9. (Same) - 1930
10. Excerpts: Annual Report of the Secretary of the Interior, Bureau of Indian Affairs, 1927
11. (Same) - 1928
12. (Same) - 1933
13. Stand Improvement - Document Summaries - Nesbitt
14. Allottees - Desire for Immediate Sale, Document Summaries Nesbitt
15. Disease and Insect Damage - Document Summaries
16. Slash Disposal Issue - Nesbitt - 1974
17. Slash Disposal Issue - Nesbitt - 1975
18. Logging Plans Issue - Nesbitt - 1975
19. Reports of Timber Cut (Down Timber Reports) Taholah Reverse of ROTC 1970 to Date
20. Crane Creek Down Timber and Progress Comments
21. Taholah Down Timber and Progress Comments
22. Crane Creek Reverse of ROTC 1970 to Date
23. Report on Forestry and Related Resources Management Quinault Indian Reservation, Dec. 28, 1971.
24. Regeneration of Logged Over Areas,
25. Quinault Resume, Prepared for Review Board Nov. 1971.
26. Helen Mitchell, et al. v. United States case, Statement of Case
27. Forest Management on the Quinault Indian Reservation By Philip A. Briegleb, Walter H. Lund, Portland, Oregon, December 1972.
28. Clearcutting: A View From The Top, by Eleanor C. J. Horwitz, 1974 (Mailed to Dr. Ficken Only)

29. Size of Logging Units - Document Summaries Draft, Nesbitt - 1974
30. Deposition Upon Oral Examination of John W. Libby U.S. Court of Claims - 1975
31. Deposition of Earle R. Wilcox, U.S. Court of Claims February 5, 1974
32. Outline of Issues - Quinault Claims Cases
33. Document Summaries - Quinault Claims Cases, From Dick Neely to Mr. Marshall - 6/11/75
34. Copy of the Critique, prepared by Western Washington Agency, Hoquiam Service Center, Hoquiam, Washington, concerning the Briegleb Report - November 17, 1975
35. Outline of Issues - Quinault Claims Cases
36. Taholah Indian Agency Jurisdiction, Ten-Year Planning Program, By the Quinaielt Indians of the Quinaielt Reservation, Washington, March 1944
37. The Revolt Against Clearcutting, by Charles A. Connaughton
38. Journal of Forestry - Vol. 31, No. 2, Feb. 1933, E. C. W. On Indian Reservations, By J. P. Kinney
39. Size of Logging Unit Issue- Draft-Nesbitt 1/14/75
40. Lack of Management Plan Issue
41. Slash Disposal (Pages J-1 through J-29), Draft, Nesbitt - 12/6/74

Marshall says not §

#2 42. Kenneth W. Hadley Deposition (mailed 2-2-76 or 2-3-76)

OUTLINE OF ISSUES

QUINAULT CLAIMS CASES

A. General Forest Management

1. Lack of Reservation Management Plan
2. Excessive Size of Logging Units
3. Excessive Length of Cutting Contracts
4. Timber Inventory - Cruises
5. Sustained Yield
6. Reforestation
7. Offering Three Units North of Quinault River at the Same Time
8. Stand Improvement
9. Fire Protection

B. Allottees

1. Competence - Education and Experience
2. Allowed Them to Squander
3. Training - Education
4. Employment
5. Communication
6. Powers of Attorneys

C. Land Management

1. Fee Patent Policy
2. Supervised Sales
3. Road Easements
4. Collection of Road Use Fees
5. Gravel Pits
6. Queets Unit

D. Logging

1. Logging Plans
2. High Grading
3. Manipulation of Cutting within Unit
4. Slash Disposal
5. Stream Treatment
6. Marking of Logs
7. Compliance with Regulations
8. Roads - Construction
9. Pick Up Scale
10. Salvage Scale

E. Contracts

1. Excessive Length

3. Stumpage Adjustments

   a. Logging Costs

   b. Interest Allowance

   c. Comparable Sales

   d. Log Prices

4. Advance Payments

F. Sawmill Claim

1. Economic Development

G. Accounting

1. Adequate Information to Allottees re Value and Status of Resource

2. Records of Payment

H. Special Permits

1. Bonds

3. Stumpage Adjustments

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40 - 49.99	-	1940 - 1949
50 - 59.99	-	1950 - 1959
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Number to left of decimal indicates the year. Number to right of decimal indicates the number of document during that year assigned to it.

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INDEX SUBJECTS cont'd

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HELEN MITCHELL, et al. v. UNITED STATES

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II - Reports, Surveys, etc.

III - Papers of Independent Legal Significance (Contracts, Deeds, Powers of Attorney, Agreements, etc.)

IV - Graphic Materials (Maps, Photos, etc.)

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VI - Accounting Statements, Receipts, etc.

VII - Case Files and Other Files

VIII - Plans

SUBCATEGORY ACCORDING TO LOGGING UNIT

A. General or Several Applications

B. Moclips Logging Unit

C. Hatch

D. Upper Wreck Creek

E. Hall

G. N. P. Trail

H. Mounts

J. Tahola

K. Cook Creek

L. Point Grenville

M. Quinault Lake

N. Milwaukee Trail

P. Boulder Creek

Q. Queets

R. Crane Creek

S. Individual Allotments (Except Queets)

OUTLINE OF ISSUES

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K. Cook Creek

L. Point Grenville

M. Quinault Lake

N. Milwaukee Trail

P. Boulder Creek

Q. Queets

R. Crane Creek

S. Individual Allotments (Except Queets)

Filed 10/18/71

IN THE UNITED STATES COURT OF CLAIMS

HELEN MITCHELL, an allottee of the Quinault Reservation, and 530 other allottees listed on Attachment A hereto; the QUINAULT ALLOTTEES ASSOCIATION; and the QUINAULT TRIBE; on their own behalves and on behalf of ALL ALLOTTEES of the Quinault Reservation or their successors,	)	
Plaintiffs,	)	
v.	)	No. 779-71
THE UNITED STATES OF AMERICA,	)	
Defendant.	)	

PETITION

(Logging Contracts Claim)

This is an action to recover money damages from the defendant, arising from its management and disposition of the property of the plaintiffs. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1491 and 1505.

1. Plaintiff Helen Mitchell and the 530 other plaintiffs named in Attachment A hereto are Indians who received trust allotments on the Quinault Indian Reservation, Washington, or are the successors of such Indians. Plaintiffs are predominantly Quinault Indians, but also include Queets, Quileute, Hoh, Chehalis, Cowlitz, Chinook and other Indians.

2. The Quinault Allottees Association is an unincorporated association consisting of the allottees described in the preceding paragraph. The Association was formed in 1968 for the purpose of representing the interests of all of the allottees of the Quinault Reservation, or their successors. Plaintiffs know the names of some 1,450 of the original allottees or their successors, but there are many more names which plaintiffs do not know. The Association's governing body is the Quinault Allottees Committee, and Chairman of the Committee is plaintiff Helen Mitchell. The Secretary of the Interior has from time to time recognized the Committee as representing all of the allottees of the Quinault Reservation.

3. The Quinault Tribe is an Indian Tribe, which has been in existence since time immemorial, and which has sovereignty over the Quinault Reservation. Its basic relationship with the defendant is established by the Treaty of Olympia, paragraph 5 below.

4. The class on whose behalf the plaintiffs sue consists of all allottees of the Quinault Reservation, or their successors, plus the Quinault Tribe in its capacity of owner of land and timber damaged by defendant's conduct as alleged herein. The class is so numerous that joinder of all members is impractical; the questions of law as to liability are common to the entire class; the claims and defenses of the plaintiffs are typical of the claims and

defenses of the class; and the representative plaintiffs will fairly and adequately protect the interests of the class. Further, the prosecution of separate actions by individual members of the class would create a risk both of inconsistent and varying adjudications with respect to individual members of the class establishing incompatible judicial standards, and of prejudicing individual members of the class whose interests would be substantially impaired by the result in this suit. Further, the interests of those members of the class who are not named plaintiffs cannot as a practical matter be adjudicated with finality except through a class action. Further, the claims presented herein arise out of the management of the Quinault Forest, which the defendant managed in many respects as a single entity.

5. Under the Treaty of Olympia, 12 Stat. 971 (1859), the Quinault and Quileute Tribes ceded all their land in the country theretofore occupied by them on the Pacific coast of Washington. The Treaty provided that:

> "Article II. There shall, however, be reserved, for the use and occupation of the tribes and bands aforesaid, a tract or tracts of lands sufficient for their wants within the Territory of Washington, to be selected by the President of the United States, and hereafter surveyed or located and set apart for their exclusive use, and no white man shall be permitted to reside thereon without permission of the tribe and of the superintendent of Indian Affairs or Indian agent.....

"* * *

"ARTICLE VI. The President ... may consolidate them with other friendly tribes or bands ... and he may further, at his discretion, cause the whole or any portion of the lands to be reserved, or of such other land as may be selected in lieu thereof, to be surveyed into lots, and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable."

6. The sixth article of the Treaty with the Omahas, 10 Stat. 1043, 1044-5 (1854), referred to in the Quinault Treaty, provides as follows:

"ARTICLE 6. The President may, from time to time, at his discretion, cause the whole or such portion of the land hereby reserved, as he may think proper, or of such other land as may be selected in lieu thereof, as provided for in article first, to be surveyed into lots, and to assign to such Indian or Indians of said tribe as are willing to avail of the privilege, and who will locate on the same as a permanent home, if a single person over twenty-one years of age, one-eighth of a section; to each family of two, one quarter section; to each family of three and not exceeding five, one half section; to each family of six and not exceeding ten, one section; and to each family over ten in number, one quarter section for every additional five members. And he may prescribe such rules and regulations as will insure to the family, in case of the death of the head thereof, the possession and enjoyment of such permanent home and the improvements thereon, And the President may, at any time, in his discretion, after such person or family has made a location on the land assigned for a permanent home, issue a patent to such person or family for such assigned land,

> conditioned that the tract shall not be aliened or leased for a longer term than two years; and shall be exempt from levy, sale, or forfeiture, which conditions shall continue in force, until a State constitution, embracing such lands within its boundaries, shall have been formed, and the legislature of the State shall remove the restrictions. And if any such person or family shall at any time neglect or refuse to occupy and till a portion of the lands assigned and on which they have located, or shall rove from place to place, the President may, if the patent shall have been issued, cancel the assignment, and may also withhold from such person or family, their proportion of the annuities or other moneys due them, until they shall have returned to such permanent home, and resumed the pursuits of industry; and in default of their return the tract may be declared abandoned, and thereafter assigned to some other person or family of such tribe, or disposed of as is provided for the disposition of the excess of said land....No State legislature shall remove the restrictions herein provided for, without the consent of Congress."

The State of Washington was admitted into the Union in 1889, 25 Stat. 676. The state legislature has not removed the restrictions provided for in the above-quoted Article 6, nor has Congress consented to the removal of the restrictions.

7. On November 4, 1873, 1 Kapp. 923, President U.S. Grant by Executive Order established the Quinault Reservation with its present boundaries "for the use of the Quinaielt, Quillehute, Hoh, Quit, and other tribes of fish-eating Indians on the Pacific Coast...." Since 1874 the Quinault Indian Reservation has retained its outer boundaries without change. It comprises some 200,000 acres, including

all of Lake Quinault and 20 miles of tidelands along the ocean, and was originally heavily forested throughout.

8. The Tribe remained the sole owner of the Reservation until about 1905. Then, pursuant to the above-quoted Treaty and Executive Order, the General Allotment Act of 1887, 24 Stat. 388, 25 U.S.C. § 331, and the Act of March 4, 1911, 36 Stat. 1345, defendant began to allot the Reservation to the members of the Tribe and other Indians. By 1933, the Reservation was completely allotted. There were over 2,300 allotments, typically 80 acres in size, and covered with valuable timber.

9. Each allottee received a deed, signed in the name of the President of the United States, containing language pursuant to Sec. 5 of the General Allotment Act, as amended, 25 U.S.C. § 348, that the United States will hold the allotment for the period of 25 years,

> "... in trust for the sole use and benefit of the Indian ... or in case of his decease, of his heirs ... and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever ... ."

The trust period of 25 years was extended from time to time, see 25 U.S.C. § 391, and then extended indefinitely by Sec. 2 of the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. § 462.

10. Pursuant to the Quinault Treaty, the Executive Order of 1873, the General Allotment Act of 1887, and the Act of March 4, 1911, the defendant has a fiduciary duty to the allottees to manage their lands and timber prudently, until the trust period ends. See also the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. §§ 461 ff., especially § 466, directing the Secretary of the Interior to make regulations for the management of Indian forestry units on a sustained yield basis; and 41 Stat. 415 (1920), 25 U.S.C. § 413, authorizing the Secretary to collect fees for defendant's services. Defendant's duty is in part recognized and embodied in the Secretary's Forestry Regulations, 25 C.F.R. Part 141.

11. The Tribe owns a few small parcels of land, totalling about 4,000 acres, some as a result of restorations by Congress, see, e.g., 73 Stat. 427 and 76 Stat. 913. All of the land and timber owned by the Tribe is held in trust by the defendant for the Tribe, and so long as the trust continues, the defendant has a fiduciary duty to manage such lands and timber prudently. This duty is recognized in 60 Stat. at 1055-6 (1946), Sec. 24; and see 25 U.S.C. § 466, directing the Secretary of the Interior to make regulations for the management of Indian forestry units on a sustained yield basis; and 25 U.S.C. § 413, authorizing the Secretary to collect fees for defendant's services. Defendant's duty is in part recognized and

embodied in the Secretary's Forestry Regulations, 25 C.F.R. Part 141.

12. The Indian sovereignty over the Reservation lies in the Quinault Tribe. The membership of the Tribe consists of "blood members" (persons of at least one-quarter Quinault or Queets blood) and "affiliated" members (persons of at least one-quarter Quileute, Hoh, Chehalis, Chinook or Cowlitz blood who own a trust interest in an allotment on the Reservation, and who reside on or near the Reservation). Many allottees are blood or affiliated members of the Tribe. However, many other allottees do not live on or within the required distance of the Reservation and so are ineligible to be members.

13. The allottees as such were totally unorganized until 1968. The Tribe has always been organized, but it could not, and did not, represent the allottees.

14. The typical allottee, for lack of education, experience and capacity to understand, relies completely on the defendant to manage his land and timber prudently, and to obtain the fair market price therefor when sold. The defendant is well aware of this reliance.

15. In 1916, after the Reservation was partially allotted, the defendant caused the timber on the Reservation to be inventoried, and logging began shortly after. The first long-term logging contract was let in 1920. By 1950, the southern half of the Reservation had been logged or was in the process of being logged under long-term contracts. Still unlogged were the Queets, Taholah and Crane Creek Units, comprising about 45,000, 30,000 and 35,000 acres respectively, in the northern half of the Reservation.

16. Beginning around 1946, in order to arrange for the logging of these three remaining units, the defendant set about gathering powers of attorneys from the owners of allotments in the Queets, Taholah, and Crane Creek Units, authorizing the defendant to enter into long-term logging contracts. Many allottees were told or encouraged to believe that unless they signed the powers, their timber would be left out of the logging contracts, and the Secretary might not permit it to be logged in their lifetimes. The defendant's employees obtained signatures without adeqaute or accurate explanation of the facts and the alternatives available, and with misrepresentation, and with undue influence. Plaintiffs were incapable of making an intelligent decision whether to sign the powers, and signed only in reliance on defendant's representation that it would be

in their best interests to do so.

17. Pursuant to the aforesaid powers of attorneys and to its powers as trustee of the plaintiffs' land, the defendant, acting through the Superintendent of the Taholah Indian Agency, entered into a contract with the Aloha Lumber Company on April 26, 1950, covering the Taholah Unit. Under this contract, Aloha purchased the timber on all allotments within the boundaries of the Taholah Unit and for which the Secretary had a power of attorney, and agreed to log it over the next 29 years. This contract will terminate in 1979.

18. The Crane Creek Unit contract was entered into with Rayonier, Inc., on June 18, 1952. It was in essential respects similar to the Taholah Unit contract, except that the term was 34 years, so that it will terminate in 1986.

19. The Queets Unit, comprising about 45,000 acres, was put up for bids, but no bids were received. Consequently, no long-term logging contract was let covering that unit, and logging since 1950 has been on an allotment-by-allotment basis. The defendant encouraged individual allottees in that unit to sell their land in fee, and discouraged or prohibited sales of timber only, and as a consequence, only about 5,700 acres of trust allotments with merchantable timber still remain in the Queets Unit, the rest having been sold to non-Indians.

20. The various contracts which defendant arranged for the logging of the Quinault Forest failed adequately to protect the interests of the allottees and the Tribe. Furthermore, the contracts were administered by defendant in such a way as to fail adequately to protect the interests of the allottees and the Tribe. The arranging of the contracts and their administration were in breach of defendant's fiduciary duty to the allottees and the Tribe. As a result, the allottees and the Tribe failed to receive fair market value for their timber, were unnecessarily delayed and restricted in realizing proceeds from their timber, suffered loss of property without just compensation, and suffered other damages in connection with the contracts.

WHEREFORE, the plaintiffs are entitled to recover such damages as the proofs may show are proper and as their interests may appear, together with interest as such or as part of just compensation, and such other relief as this Court may deem proper.

Respectfully submitted,

Charles A. Hobbs
Attorney for Plaintiffs
1616 H Street, N.W.
Washington, D.C. 20006

WILKINSON, CRAGUN & BARKER
Jerry C. Straus
Charles H. Gibbs, Jr.

Of Counsel

ATTACHMENT A

List of Plaintiffs, Mitchell v. United States

1. Adams, Agnes Skahan
2. Ahto, Raymond
3. Alden, Lee F.
4. Alexander, Phebe Halbert
5. Allebaugh, Rose M. Hoveland
6. Allen, Caroline Millett
7. Allen, Cora Walters Johns
8. Allen, Janell J.
9. Ancheta, Louise G.
10. Andy, Cynthia Roberta Davis
11. Armas, Tessie M. Pickernell
12. Aronson, Daryll C.
13. Aronson, Myron
14. Asman, Mrs. Rose Walkowsky
15. Baar, Rose Corwin
16. Babic, Helen Williams
17. Back, Charlene Blue
18. Bailey, Evelyn Jackson Ward
19. Bailey, Geraldine Connors
20. Baker, Harry D.
21. Baker, T. Beatrice Charley
22. Baker, Vernon F.
23. Balch, James
24. Bange, Lila G.
25. Baranzelli, T. Christensen
26. Bastian, James L.,Jr.
27. Beckwith, Ernest
28. Beckwith, Leslie Warren
29. Beckwith, Richard P.
30. Beckwith, Robert E.
31. Bennett, P. Ann Pickernell
32. Bennett, Walter F.
33. Bergman, Clara Heiner
34. Bertrand, Gladys Goodwin
35. Bishop, Anita E. Armstrong
36. Black, Beatrice Pullen
37. Black, Ethel Payne
38. Black, George
39. Black, Glenn
40. Black, Joseph Calvin
41. Black, Roy, Sr.
42. Black, Vern
43. Boldt, G. Louise Elliott
44. Boome, Jennie Martin
45. Borowski. S. Collen Sotomish
46. Bowechop, Frances
47. Bowechop, H. Mason Saux
48. Bowechop, Harry
49. Boyer, L. Rose Alden
50. Boyer, Martha
51. Bradford, Gene W.
52. Bremmer, Olive Gracey
53. Brignone, Antone
54. Brignone, Nora S.
55. Brown, Gladys
56. Brown, J. Elizabeth Hoveland
57. Brown, Mary Cultee
58. Bryan, Norma Penn
59. Bryson, James W.
60. Bryson, Jane Strom
61. Buchanan, Katherine L.
62. Bumgarner, Bernard
63. Bumgarner, Mildred Slade
64. Bumgarner, Nina Charley
65. Bunn, V. Rosetta Bowechop
66. Burchett, Jessie Miles
67. Burns, Venita Woods
68. Butler, Charles
69. Butler, Delores Gill
70. Butler, Ruth Sam
71. Cannard, D. C. Van Valkenburg
72. Capoeman, Felix E.
73. Capoeman, Mabel
74. Capoeman, Norman
75. Carlson, Clarence G.
76. Case, Lincoln
77. Castillo, Ruby Sanders
78. Charles, Mary Ann Heck
79. Charles, Paul A.
80. Charley, Benjamin,Jr.
81. Charley, Bennie, Sr.
82. Charley, Edwin
83. Charley, Elfrieda Strom
84. Charley, Katherine

85. Charley, Stanley Arlee D.
86. Chartraw, Theodora Holden
87. Chenois, Daniel
88. Chenois, Marguerite M.
89. Chidester, Thurman L.
90. Chisholm, Ethel Ahto
91. Choate, Sarah L. Miller
92. Christian, Evelyn D. Kelly
93. Christiansen, S. Morganroth
94. Clark, J. Van Mechelen
95. Cole, Bryan
96. Cole, Elizabeth J.
97. Comenout, Dollietta Hyasman
98. Comenout, William Gerald
99. Cooper, Edward H.
100. Cooper, Mabel Beckwith
101. Cooper, Ramona Penn
102. Corwin, Ella Williams
103. Cowan, Rilla E. Williams
104. Cox, Mabel
105. Crawford, Carol M. Cole
106. Cultee, Alvin F.
107. Cultee, Bernice Chenois
108. Cultee, Cliff A.
109. Cultee, Ira Guy
110. Cultee, Tracy Charley
111. Curley, Jessie Saux
112. Davis, Earl George
113. Davis, Preston G.
114. Davy, Ida Walkowsky
115. Deguire, Peter J.
116. De La Cruz, K. Williams Penn
117. De Nobrega, Esther Pete
118. De Roche, Alice Marie James
119. Dick, Theresa Capoeman
120. Dieckhoff, Virginia Capoeman
121. Ditton, Elizabeth Shaw
122. Dominick, John R.
123. Duncan, Louise J.
124. Ebling, Edna Lane
125. Edison, Sigurd A., Jr.
126. Elliott, Albert G.
127. Elliott, Brian D.
128. Elliott, Donald R.
129. Elliott, Harry George
130. Elliott, Henry C., Jr.
131. Elliott, Joseph Howard
132. Elliott, Phillip J.
133. Elliott, Ralph George
134. Elvrum, Betty
135. Eselin, Marie George
136. Farnsworth, E. J. Griggs
137. Farron,Narcisse High
138. Figg, Alicia Shale
139. Fogarty, C. Koford Loggins
140. Foster, Marvella Penn
141. Fowler, Molly K. Price Brown
142. Frank, Ella
143. Fredericksen, James J.
144. Frederickson, Nancy E.
145. French, G. Hobucket California
146. Fryberg, Rose E. Cultee
147. Garfield, Billy Alexander
148. Garrick, Christina Penn
149. George, Calvin
150. George, Clarence
151. George, Edna Marie
152. George, Frank A.
153. Gill, Alice B. M. Ross Stump
154. Goodell, Willard Otto
155. Goodwin, Thomas A.
156. Green, Everett
157. Green, Pauline Campbell
158. Gregg, Dorothy Halbert
159. Gross, Gloria J. Chatman
160. Grover, Tillie Comenout
161. Gunnels, Shirley Davis
162. Hakki, Frances Emma
163. Halbert, Hilary H., Jr.
164. Halbert, Sidney E.
165. Halbert, Vernon S.
166. Hale, George F.
167. Hale, Secena Oralee
168. Hall, Clara Youckton
169. Hall, Frank
170. Hall, Grace Charley
171. Hall, Lawrence James, Jr.
172. Hall, Ronald Oscar
173. Hansen, Theodora
174. Harlow, Harriet Millett
175. Harp, James.
176. Harrison, Helen C.
177. Hartstrom, Mildred Halbert
178. Hatch, Ezra Zane
179. Hawkes, Harold L.
180. Hawkes, J. Sansom Sampson
181. Hawkes, Leonard W., Sr.
182. Hawks, L. Cultee Blackburn
183. Hayden, Elmer
184. Hayden, Eva Williams

185. Hayden, John Jr.
186. Heck, Edith
187. Heck, Lena Josephine
188. Heck, Lily Hayden
189. Heiner, Frank W.
190. Heiner, George C.
191. Heiner, Harold Elmer
192. Heiner, Robert, E., Jr.
193. Henry, Christian K., Jr.
194. Hicks, Doris Emily James
195. Hicks, Marjorie Lee
196. Hillaire, Lena Cultee
197. Hillsbery, Edward I.
198. Hillsbery, Keith E.
199. Hjorten, S. Elizabeth Miles
200. Hobucket, Glenn G.
201. Hoh, Dorothy McLeod
202. Holden, Virginia
203. Holland, Lula Elliott
204. Holloway, Marian Law
205. Howeattle, Charles A.
206. Howeattle, Nathan Pickernell
207. Hudson, Floyd
208. Hudson, Pansy Howeattle
209. Hudson, Theodore, Sr.
210. Hudson, Theodore, Jr.
211. Hukkala, Daisy Mumby
212. Hunter, Katie
213. Hyasman, Ellen Heath
214. Iyall, Dorothy
215. Iyall, Hattie J.
216. Jackson, Charles, T. Millett
217. Jackson, Cleveland Barry
218. Jackson, James
219. Jackson, Johnny
220. Jackson, Louise Jurhs
221. Jackson, Oliver
222. Jacobs, Christine Millett
223. Jaime, Donna
224. James, Russell Philipp
225. Jantschar, Ruth
226. Johns, Brenda Faye
227. Johns, Harvey
228. Johns, Louise Napoleon
229. Johns, Vance, Jr.
230. Johnson, Ferrill
231. Johnson, Rachel E. Goodwin
232. Johnstone, Marguerite Law
233. Jones, Bernice Pullen
234. Jones, Hazel
235. Jones, Lindberg
236. Judson, Mildred E. Prince
237. Jurhs, Alvin L.
238. Kalama, Charlotte Penn
239. Kalander, Ida Reinertsen
240. Kalashian, Alice B.
241. Kallappa, Josephine
242. Kauttu, C. Henry Josephson
243. Kelley, Anna Marie
244. Kelly, Clara Chenois
245. Kelly, Maggie J.
246. Kelly, Sidney B.
247. Kelly, Tom
248. Kench, Adele Martin
249. King, Florence Cos
250. Kintanak, Violet Hudson
251. Kirkpatrick, Adah West
252. Klatush, Alice R. Hudson
253. Koehler, Helen Blakeslee
254. Koontz, Anna M. Elliott
255. Lagergren, Alice C. Prior
256. Landry, Myrtle Charley
257. Law, Robert W.
258. Lawrence, Iva Tyler
259. Leatham, Mary Heiner
260. Lee, Helen
261. Lee, Warren
262. Lewis, Alfred Lincoln
263. Lewis, Hattie
264. Logan, Flora Shale
265. Logan, Howard, Jr.
266. Logan, Larry Wayne
267. Lorton, Catherine
268. Lutts, Florence Williams
269. Lynch, Jesse Charles
270. Lynch, Jesse G.
271. Lynch, Monty
272. Mansfield, Kathleen Rubens
273. Marcus, Arthur Dean
274. Marcus, Donald Wayne
275. Marcus, Thomas D., Jr.
276. Markishtum, Frieda Penn
277. Martin, Arthur
278. Martin, Mary Jane
279. Martin, Phillip E.
280. Martin, Rose Marie Purdy
281. Martinez, Mary Lou Penn
282. Marx, Ada Black
283. Mason, Allen
284. Mason, Calvin

285. Mason, Johnny H.
286. Mason, Sam Charles
287. Masten, Alice Elsie Cole
288. Mathes, Linda
289. Matthies, Kathleen Ward
290. Maynard, Catherine Ahto
291. McBride, Allen
292. McBride, Blanche Shale
293. McBride, Ernest
294. McBride, Martha J.
295. McCreery, Sandra Lee Marcus
296. McCrory, Francis
297. McCrory, Sharon Lee Simmons
298. McGhee, Viola A. George
299. McKenney, Hazel Charley
300. Millett, Judy J.
301. Millett, William S.
302. Minsker, Mary Miles
303. Mitchell, Helen
304. Moberg, Josephine Hope Miles
305. Morganroth, Chris, Sr.
306. Morganroth, Chris E., III
307. Mounts, Frank Wells
308. Mounts, Gilbert F.
309. Mowitch, Clifford
310. Napoleon, Frank Wells
311. Napoleon, Loretta
312. Narvaez, Winifred Pickernell
313. Neuert, J. Lingerfelter
314. Newton, Alice Shale
315. Nichols, Laura Starr
316. Niemi, Joan Marie Peterson
317. Norton, Phyllis
318. Nunes, Ellen Amelia
319. Nunes, Lillian Ellen
320. Nunes, Loretta Jean
321. Obi, Cecilia
322. Obi, Hazel
323. Obi, Kilbane
324. Oliver, Emmett S.
325. Oliver, James R.
326. Olsen, Lester F.
327. Paaso, Florence Elliott
328. Palmateer, Patricia Cole
329. Parker, Marion E.
330. Parker, Meredith
331. Payne, Kenneth
332. Payne, Richard W.
333. Penn, Alvin Steve
334. Penn, Christian, Jr.
335. Penn, Earl
336. Penn, Pearl
337. Penn, Ronald Spencer
338. Penn, Ruth
339. Penn, William B.
340. Persson, Fridolph Hilman
341. Pete, Jesse
342. Pete, Oscar H.
343. Pete, Walter
344. Peters, Calvin J.
345. Petersen, Carolyn M.
346. Peterson, Amelia L. Alden
347. Peterson, Beverly Davis
348. Peterson, Helen
349. Peterson, Wendell D.
350. Petit, Andrew J.
351. Petit, Douglas
352. Petit, Frank H.
353. Petit, Mary Barichio
354. Petit, Norris A.
355. Petit, Norris Donald
356. Petit, Paul E.
357. Petit, Wilfred D.
358. Pickernell, David L.
359. Pickernell, Clarence F.
360. Pickernell, Edward A. (Wiley)
361. Pickernell, Ellen G.
362. Pickernell, Frank
363. Pickernell, Gerald
364. Pickernell, Lorilee Youckton
365. Pickernell, Richard E.
366. Pickernell, Sally Nakamato
367. Pickernell, William N.
368. Pikutack, Hattie Hayden
369. Pinkham, Justin
370. Polacek, Ira
371. Pope, Robert
372. Pope, Rose Chenois
373. Pullen, Douglas Sr.
374. Pullen, Lillian Payne Penn
375. Pulsifer, Rena M.Heck
376. Purdy, Dave
377. Purdy, Dorothy Taylor
378. Purdy, Rose B. Snell
379. Ralston, Shirley Mae Charley
380. Ramirez, Nellie
381. Reaume, Mary Lou Chandler
382. Reed, Albert H.
383. Reed, Alvina Black
384. Reed, Benjamin A.

385. Reed, Bennett, B.
386. Reed, Charles G.
387. Reed, Loyal Clark
388. Reinertsen, E. E. Goodell
389. Reinertsen, Henry G.
390. Reinertsen, Jack
391. Reinertsen,Theodore
392. Revay, Martin
393. Rexford, Catherine Walkowsky
394. Rhoades, Annie Clark
395. Rhoades, Carlton Lewis
396. Richards, Nellie W.
397. Riffe, Leslie J.
398. Riley, Karen Sotomish
399. Robertson, Elizabeth Davis
400. Robertson, Mabel Balch
401. Robinson, Josephine H.
402. Robinson, Leonard P.
403. Robinson, Rosemary George
405. Rosander, Ida Jack
406. Rosander, Kenneth J.
407. Rosander, Leonard
408. Rosander, Mollie Charley
409. Rosander, Pearl Cultee
410. Rosenquist, Charlotte Cultee
411. Rubens, Christian K.
412. Rubens, Joseph F.
413. Sagurdo, Verna
414. Sailto, Bud
415. Sailto, John Morton
416. Salakike, Clayton W.
417. Sam, Casper, J., Sr.
418. Sam,Harry S.
419. Sam, Loretta Charles
420. Sampson, Wilbert O. Sr.
421. Sanders, James
422. Sanders, Sidney
423. Sansom, Earl L.
424. Sansom, Frank
425. Sansom, John R.
426. Sasticum, Lorraine Corwin
427. Saunders, Mary L. Phillips
428. Saux, Frederick W.
429. Saux, Geraldine M.
430. Sawatari, Geraldine Gill
431. Scheibel, Violet Brenner
432. Shale, Irene Charley
433. Shale, John Jr.
434. Shale, Leta Rose
435. Shale,Warren C., Jr.
436. Shaw, Leonard
437. Shefler, Lillian Salakike
438. Shepherd, Carolyn M. Peterson
439. Simmons, Euland D.
440. Simmons, Lucille Cultee
441. Simmons, Mike
442. Skahan, Antone R.
443. Skahan, Stella James
444. Slade, Daisy Borg
445. Slade, Mary Ann Goodwin
446. Sotomish, Quentin
447. Sotomish, Sarah Sam
448. Smith, Agnes Cox
449. Smith, Annette, Sanchez
450. Smith, Arthur L.
451. Smith, Eileen, E.
452. Smith, Flora Wain
453. Smith, Gary E.
454. Smith, Sidney
455. Snell,Angeline Charley
456. Snell, Florence Elliott
457. Snell, Robert Sr.
458. Snider,Clifford E.
459. Sohol, Frances Elliott
460. Souvenir, Mary Elliott
461. Starr, Anna M. Bradford
462. Starr, Violet S.
463. Stefano, I. St.Clair P. Reed
464. Stephan, Edson M.
465. Stephan, Martha
466. Stewart, Emma Woods
467. St. Germain, Barney M.
468. Stone, Albert A.
469. Strom,Donald E.
470. Strom, Hazel Pete
471. Stump, Richard A.
472. Sund, Aldolph
473. Swan, Ruth Anderson
474. Syre, David R.
475. Taylor, Julian Bell Alden
476. Thomas, Maybelle Cultee
477. Thomas, Vida Ward
478. Thompson, Irene Youckton
479. Tobin, Kenneth A.
480. Torrez, Ruby Ellen Reed
481. Turner, Charlotte A. Mason
482. Turner, Cherine B.
483. Underwood, Byrdeen
484. Underwood, Hazel Purdy Pope
485. Underwood, Robert, Sr.

486. Van Mechelen, Daniel L.
487. Van Mechelen, Helen Brown
488. Vandervest, Isabelle Hudson
489. Walkowsky, Alvin
490. Walkowsky, Ethel E. Pope
491. Wallerstedt, Bertha Woodruff
492. Ward, Arvie
493. Ward, Margaret
494. Ward, Marion L.
495. Wells, Catherine Gill
496. Whetung, Georgianna Cross
497. Whitaker, Alberta Chenois
498. White, Jessie Provoe
499. Whitish, Rachel Brignone
500. Williams, Charles, R.
501. Williams. Donald E.
502. Williams, Dorris Reed
503. Williams, Iola Penn
504. Williams, Mary Fisher
505. Williams, Priscilla E. Payne
506. Wilson, Robert L.
507. Winkler, Bernice Elsie Hoveland
508. Wolfs, Dolly M. Farrell
509. Woodruff, Fred
510. Woodruff, Russell
511. Woodruff, Sarah Ida Ward.
512. Wright, Sophie Reinertsen
513. Yandell, Pamela Rae
514. Yerkes, Arthur A.
515. Yerkes, Caesar James
516. Youckton, Percy
517. Young, Leonard
518. Young, Lillian Sanders
519. Zollner, Myrtle Shaw
520. Black, Clyde
521. Hayden, John, Sr.
522. Heck, Thomas Ralph
523. Hernandez, Rosemary Pete
524. Jack,Mabel Hayden
525. Jackson, Thomas L.
526. Lagergren, Sally A.
527. Moran, Olive M. Anderson
528. Mounts, Norman U.
529. Penn, Thomas
530. Sherwood,Emily Johns
531. Strong, Anna Mae Rhoades

Filed 10/18/71

IN THE UNITED STATES COURT OF CLAIMS

HELEN MITCHELL, an allottee of the Quinault Reservation, and 530 other allottees listed on Attachment A hereto; the QUINAULT ALLOTTEES ASSOCIATION; and the QUINAULT TRIBE; on their own behalves and on behalf of ALL ALLOTTEES of the Quinault Reservation or their successors,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

No. 773-71

PETITION

FILED OCT 18 1971

(Queets Unit Claim)

This is an action to recover money damages from the defendant, arising from its management and disposition of the property of the plaintiffs. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1491 and 1505.

1. Plaintiff Helen Mitchell and the 530 other plaintiffs named in Attachment A hereto are Indians who received trust allotments on the Quinault Indian Reservation, Washington, or are the successors of such Indians. Plaintiffs are predominantly Quinault Indians, but also include Queets, Quilcute, Hoh, Chehalis, Cowlitz, Chinook and other Indians.

2. The Quinault Allottees Association is an unincorporated association consisting of the allottees described in the preceding paragraph. The Association was formed in 1968 for the purpose of representing the interests of all of the allottees of the Quinault Reservation, or their successors. Plaintiffs know the names of some 1,450 of the original allottees or their successors, but there are many more names which plaintiffs do not know. The Association's governing body is the Quinault Allottees Committee, and Chairman of the Committee is plaintiff Helen Mitchell. The Secretary of the Interior has from time to time recognized the Committee as representing all of the allottees of the Quinault Reservation.

3. The Quinault Tribe is an Indian Tribe, which has been in existence since time immemorial, and which has sovereignty over the Quinault Reservation. Its basic relationship with the defendant is established by the Treaty of Olympia, paragraph 5 below.

4. The class on whose behalf the plaintiffs sue consists of all allottees of the Quinault Reservation, or their successors, plus the Quinault Tribe in its capacity of owner of land and timber damaged by defendant's conduct as alleged herein. The class is so numerous that joinder of all members is impractical; the questions of law as to liability are common to the entire class; the claims and defenses of the plaintiffs are typical of the claims and

defenses of the class; and the representative plaintiffs will fairly and adequately protect the interests of the class. Further, the prosecution of separate actions by individual members of the class would create a risk both of inconsistent and varying adjudications with respect to individual members of the class establishing incompatible judicial standards, and of prejudicing individual members of the class whose interests would be substantially impaired by the result in this suit. Further, the interests of those members of the class who are not named plaintiffs cannot as a practical matter be adjudicated with finality except through a class action. Further, the claims presented herein arise out of the management of the Quinault Forest, which the defendant managed in many respects as a single entity.

5. Under the Treaty of Olympia, 12 Stat. 971 (1859), the Quinault and Quileute Tribes ceded all their land in the country theretofore occupied by them on the Pacific coast of Washington. The Treaty provided that:

> "Article II. There shall, however, be reserved, for the use and occupation of the tribes and bands aforesaid, a tract or tracts of lands sufficient for their wants within the Territory of Washington, to be selected by the President of the United States, and hereafter surveyed or located and set apart for their exclusive use, and no white man shall be permitted to reside thereon without permission of the tribe and of the superintendent of Indian Affairs or Indian agent.....

"* * *

"ARTICLE VI. The President ... may consolidate them with other friendly tribes or bands ... and he may further, at his discretion, cause the whole or any portion of the lands to be reserved, or of such other land as may be selected in lieu thereof, to be surveyed into lots, and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable."

6. The sixth article of the Treaty with the Omahas, 10 Stat. 1043, 1044-5 (1854), referred to in the Quinault Treaty, provides as follows:

"ARTICLE 6. The President may, from time to time, at his discretion, cause the whole or such portion of the land hereby reserved, as he may think proper, or of such other land as may be selected in lieu thereof, as provided for in article first, to be surveyed into lots, and to assign to such Indian or Indians of said tribe as are willing to avail of the privilege, and who will locate on the same as a permanent home, if a single person over twenty-one years of age, one-eighth of a section; to each family of two, one quarter section; to each family of three and not exceeding five, one half section; to each family of six and not exceeding ten, one section; and to each family over ten in number, one quarter section for every additional five members. And he may prescribe such rules and regulations as will insure to the family, in case of the death of the head thereof, the possession and enjoyment of such permanent home and the improvements thereon. And the President may, at any time, in his discretion, after such person or family has made a location on the land assigned for a permanent home, issue a patent to such person or family for such assigned land,

> conditioned that the tract shall not be aliened or leased for a longer term than two years; and shall be exempt from levy, sale, or forfeiture, which conditions shall continue in force, until a State constitution, embracing such lands within its boundaries, shall have been formed, and the legislature of the State shall remove the restrictions. And if any such person or family shall at any time neglect or refuse to occupy and till a portion of the lands assigned and on which they have located, or shall rove from place to place, the President may, if the patent shall have been issued, cancel the assignment, and may also withhold from such person or family, their proportion of the annuities or other moneys due them, until they shall have returned to such permanent home, and resumed the pursuits of industry; and in default of their return the tract may be declared abandoned, and thereafter assigned to some other person or family of such tribe, or disposed of as is provided for the disposition of the excess of said land....No State legislature shall remove the restrictions herein provided for, without the consent of Congress."

The State of Washington was admitted into the Union in 1889, 25 Stat. 676. The state legislature has not removed the restrictions provided for in the above-quoted Article 6, nor has Congress consented to the removal of the restrictions.

7. On November 4, 1873, 1 Kapp. 923, President U.S. Grant by Executive Order established the Quinault Reservation with its present boundaries "for the use of the Quinaielt, Quillehute, Hoh, Quit, and other tribes of fish-eating Indians on the Pacific Coast...." Since 1874 the Quinault Indian Reservation has retained its outer boundaries without change. It comprises some 200,000 acres, including

all of Lake Quinault and 20 miles of tidelands along the ocean, and was originally heavily forested throughout.

8. The Tribe remained the sole owner of the Reservation until about 1905. Then, pursuant to the above-quoted Treaty and Executive Order, the General Allotment Act of 1887, 24 Stat. 388, 25 U.S.C. § 331, and the Act of March 4, 1911, 36 Stat. 1345, defendant began to allot the Reservation to the members of the Tribe and other Indians. By 1933, the Reservation was completely allotted. There were over 2,300 allotments, typically 80 acres in size, and covered with valuable timber.

9. Each allottee received a deed, signed in the name of the President of the United States, containing language pursuant to Sec. 5 of the General Allotment Act, as amended, 25 U.S.C. § 348, that the United States will hold the allotment for the period of 25 years,

> "... in trust for the sole use and benefit of the Indian ... or in case of his decease, of his heirs ... and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever ... ."

The trust period of 25 years was extended from time to time, see 25 U.S.C. § 391, and then extended indefinitely by Sec. 2 of the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. § 462.

10. Pursuant to the Quinault Treaty, the Executive Order of 1873, the General Allotment Act of 1887, and the Act of March 4, 1911, the defendant has a fiduciary duty to the allottees to manage their lands and timber prudently, until the trust period ends. See also the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. §§ 461 ff., especially § 466, directing the Secretary of the Interior to make regulations for the management of Indian forestry units on a sustained yield basis; and 41 Stat. 415 (1920), 25 U.S.C. § 413, authorizing the Secretary to collect fees for defendant's services. Defendant's duty is in part recognized and embodied in the Secretary's Forestry Regulations, 25 C.F.R. Part 141.

11. The Tribe owns a few small parcels of land, totalling about 4,000 acres, some as a result of restorations by Congress, see, e.g., 73 Stat. 427 and 76 Stat. 913. All of the land and timber owned by the Tribe is held in trust by the defendant for the Tribe, and so long as the trust continues, the defendant has a fiduciary duty to manage such lands and timber prudently. This duty is recognized in 60 Stat. at 1055-6 (1946), Sec. 24; and see 25 U.S.C. § 466, directing the Secretary of the Interior to make regulations for the management of Indian forestry units on a sustained yield basis; and 25 U.S.C. § 413, authorizing the Secretary to collect fees for defendant's services. Defendant's duty is in part recognized and

embodied in the Secretary's Forestry Regulations, 25 C.F.R. Part 141.

12. The Indian sovereignty over the Reservation lies in the Quinault Tribe. The membership of the Tribe consists of "blood members" (persons of at least one-quarter Quinault or Queets blood) and "affiliated" members (persons of at least one-quarter Quileute, Hoh, Chehalis, Chinook or Cowlitz blood who own a trust interest in an allotment on the Reservation, and who reside on or near the Reservation). Many allottees are blood or affiliated members of the Tribe. However, many other allottees do not live on or within the required distance of the Reservation and so are ineligible to be members.

13. The allottees as such were totally unorganized until 1968. The Tribe has always been organized, but it could not, and did not, represent the allottees.

14. The typical allottee, for lack of education, experience and capacity to understand, relies completely on the defendant to manage his land and timber prudently, and to obtain the fair market price therefor when sold. The defendant is well aware of this reliance.

15. In 1916, after the Reservation was partially allotted, the defendant caused the timber on the Reservation to be inventoried, and logging began shortly after. The first long-term logging contract was let in 1920. By 1950, the southern half of the Reservation had been logged or was in the process of being logged under long-term contracts. Still unlogged were the Queets, Taholah and Crane Creek Units, comprising about 45,000, 30,000 and 35,000 acres respectively, in the northern half of the Reservation.

16. Beginning around 1946, in order to arrange for the logging of these three remaining units, the defendant set about gathering powers of attorneys from the owners of allotments in the Queets, Taholah, and Crane Creek Units, authorizing the defendant to enter into long-term logging contracts. Many allottees were told or encouraged to believe that unless they signed the powers, their timber would be left out of the logging contracts, and the Secretary might not permit it to be logged in their lifetimes. The defendant's employees obtained signatures without adeqaute or accurate explanation of the facts and the alternatives available, and with misrepresentation, and with undue influence. Plaintiffs were incapable of making an intelligent decision whether to sign the powers, and signed only in reliance on defendant's representation that it would be

in their best interests to do so.

17. Pursuant to the aforesaid powers of attorneys and to its powers as trustee of the plaintiffs' land, the defendant, acting through the Superintendent of the Taholah Indian Agency, entered into a contract with the Aloha Lumber Company on April 26, 1950, covering the Taholah Unit. Under this contract, Aloha purchased the timber on all allotments within the boundaries of the Taholah Unit and for which the Secretary had a power of attorney, and agreed to log it over the next 29 years. This contract will terminate in 1979.

18. The Crane Creek Unit contract was entered into with Rayonier, Inc., on June 18, 1952. It was in essential respects similar to the Taholah Unit contract, except that the term was 34 years, so that it will terminate in 1986.

19. The Queets Unit, comprising about 45,000 acres, was put up for bids, but no bids were received. Consequently, no long-term logging contract was let covering that unit, and logging since 1950 has been on an allotment-by-allotment basis. The defendant encouraged individual allottees in that unit to sell their land in fee, and discouraged or prohibited sales of timber only, and as a consequence, only about 5,700 acres of trust allotments with merchantable timber still remain in the Queets Unit, the rest having been sold to non-Indians.

20. The defendant's management of the Queets Unit, for example its failure to arrange for proper logging of the unit, its failure to insure a sound road system prior to allowing most of the land to go out of Indian ownership, its encouragement of land sales by Indians, its policies toward Indians who wanted to log their own allotments, were in breach of defendant's fiduciary duty to the allottees and the Tribe. The same allegations also apply to individual allotments located within areas under logging contracts but not subject to such contracts, and to other allotments. As a result, the allottees and the Tribe failed to receive fair market value for their land and timber, were unnecessarily delayed and restricted in realizing proceeds from their timber, suffered loss of property without just compensation, and were otherwise damaged. The Tribe was specially damaged in having a substantial part of its jurisdiction pass into non-Indian ownership.

WHEREFORE, the plaintiffs are entitled to recover such damages as the proofs may show are proper and as their interests may appear, together with interest

as such or as part of just compensation, and such other relief as this Court may deem proper.

Respectfully submitted,

Charles A. Hobbs
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1616 H Street, N.W.
Washington, D.C. 20006

WILKINSON, CRAGUN & BARKER
Jerry C. Straus
Charles H. Gibbs, Jr.

Of Counsel

ATTACHMENT A

List of Plaintiffs, Mitchell v. United States

1. Adams, Agnes Skahan
2. Ahto, Raymond
3. Alden, Lee F.
4. Alexander, Phebe Halbert
5. Allebaugh, Rose M. Hoveland
6. Allen, Caroline Millett
7. Allen, Cora Walters Johns
8. Allen, Janell J.
9. Ancheta, Louise G.
10. Andy, Cynthia Roberta Davis
11. Armas, Tessie M. Pickernell
12. Aronson, Daryll C.
13. Aronson, Myron
14. Asman, Mrs. Rose Walkowsky
15. Baar, Rose Corwin
16. Babic, Helen Williams
17. Back, Charlene Blue
18. Bailey, Evelyn Jackson Ward
19. Bailey, Geraldine Connors
20. Baker, Harry D.
21. Baker, T. Beatrice Charley
22. Baker, Vernon F.
23. Balch, James
24. Bange, Lila G.
25. Baranzelli, T. Christensen
26. Bastian, James L.,Jr.
27. Beckwith, Ernest
28. Beckwith, Leslie Warren
29. Beckwith, Richard P.
30. Beckwith, Robert E.
31. Bennett, P. Ann Pickernell
32. Bennett, Walter F.
33. Bergman, Clara Heiner
34. Bertrand, Gladys Goodwin
35. Bishop, Anita E. Armstrong
36. Black, Beatrice Pullen
37. Black, Ethel Payne
38. Black, George
39. Black, Glenn
40. Black, Joseph Calvin
41. Black, Roy, Sr.
42. Black, Vern
43. Boldt, G. Louise Elliott
44. Boome, Jennie Martin
45. Borowski. S. Collen Sotomish
46. Bowechop, Frances
47. Bowechop, H. Mason Saux
48. Bowechop, Harry
49. Boyer, L. Rose Alden
50. Boyer, Martha
51. Bradford, Gene W.
52. Bremmer, Olive Gracey
53. Brignone, Antone
54. Brignone, Nora S.
55. Brown, Gladys
56. Brown, J. Elizabeth Hoveland
57. Brown, Mary Cultee
58. Bryan, Norma Penn
59. Bryson, James W.
60. Bryson, Jane Strom
61. Buchanan, Katherine L.
62. Bumgarner, Bernard
63. Bumgarner, Mildred Slade
64. Bumgarner, Nina Charley
65. Bunn, V. Rosetta Bowechop
66. Burchett, Jessie Miles
67. Burns, Venita Woods
68. Butler, Charles
69. Butler, Delores Gill
70. Butler, Ruth Sam
71. Cannard, D. C. Van Valkenburg
72. Capoeman, Felix E.
73. Capoeman, Mabel
74. Capoeman, Norman
75. Carlson, Clarence G.
76. Case, Lincoln
77. Castillo, Ruby Sanders
78. Charles, Mary Ann Heck
79. Charles, Paul A.
80. Charley, Benjamin,Jr.
81. Charley, Bennie, Sr.
82. Charley, Edwin
83. Charley, Elfrieda Strom
84. Charley, Katherine

85. Charley, Stanley Arlee D.
86. Chartraw, Theodora Holden
87. Chenois, Daniel
88. Chenois, Marguerite M.
89. Chidester, Thurman L.
90. Chisholm, Ethel Ahto
91. Choate, Sarah L. Miller
92. Christian, Evelyn D. Kelly
93. Christiansen, S. Morganroth
94. Clark, J. Van Mechelen
95. Cole, Bryan
96. Cole, Elizabeth J.
97. Comenout, Dollietta Hyasman
98. Comenout, William Gerald
99. Cooper, Edward H.
100. Cooper, Mabel Beckwith
101. Cooper, Ramona Penn
102. Corwin, Ella Williams
103. Cowan, Rilla E. Williams
104. Cox, Mabel
105. Crawford, Carol M. Cole
106. Cultee, Alvin F.
107. Cultee, Bernice Chenois
108. Cultee, Cliff A.
109. Cultee, Ira Guy
110. Cultee, Tracy Charley
111. Curley, Jessie Saux
112. Davis, Earl George
113. Davis, Preston G.
114. Davy, Ida Walkowsky
115. Deguire, Peter J.
116. De La Cruz, K. Williams Penn
117. De Nobrega, Esther Pete
118. De Roche, Alice Marie James
119. Dick, Theresa Capoeman
120. Dieckhoff, Virginia Capoeman
121. Ditton, Elizabeth Shaw
122. Dominick, John R.
123. Duncan, Louise J.
124. Ebling, Edna Lane
125. Edison, Sigurd A., Jr.
126. Elliott, Albert G.
127. Elliott, Brian D.
128. Elliott, Donald R.
129. Elliott, Harry George
130. Elliott, Henry C., Jr.
131. Elliott, Joseph Howard
132. Elliott, Phillip J.
133. Elliott, Ralph George
134. Elvrum, Betty
135. Eselin, Marie George
136. Farnsworth, E. J. Griggs
137. Farron, Narcisse High
138. Figg, Alicia Shale
139. Fogarty, C. Koford Loggins
140. Foster, Marvella Penn
141. Fowler, Molly K. Price Brown
142. Frank, Ella
143. Fredericksen, James J.
144. Frederickson, Nancy E.
145. French, G. Hobucket California
146. Fryberg, Rose E. Cultee
147. Garfield, Billy Alexander
148. Garrick, Christina Penn
149. George, Calvin
150. George, Clarence
151. George, Edna Marie
152. George, Frank A.
153. Gill, Alice B. M. Ross Stump
154. Goodell, Willard Otto
155. Goodwin, Thomas A.
156. Green, Everett
157. Green, Pauline Campbell
158. Gregg, Dorothy Halbert
159. Gross, Gloria J. Chatman
160. Grover, Tillie Comenout
161. Gunnels, Shirley Davis
162. Hakki, Frances Emma
163. Halbert, Hilary H., Jr.
164. Halbert, Sidney E.
165. Halbert, Vernon S.
166. Hale, George F.
167. Hale, Secena Oralee
168. Hall, Clara Youckton
169. Hall, Frank
170. Hall, Grace Charley
171. Hall, Lawrence James, Jr.
172. Hall, Ronald Oscar
173. Hansen, Theodora
174. Harlow, Harriet Millett
175. Harp, James.
176. Harrison, Helen C.
177. Hartstrom, Mildred Halbert
178. Hatch, Ezra Zane
179. Hawkes, Harold L.
180. Hawkes, J. Sansom Sampson
181. Hawkes, Leonard W., Sr.
182. Hawks, L. Cultee Blackburn
183. Hayden, Elmer
184. Hayden, Eva Williams

185. Hayden, John Jr.
186. Heck, Edith
187. Heck, Lena Josephine
188. Heck, Lily Hayden
189. Heiner, Frank W.
190. Heiner, George C.
191. Heiner, Harold Elmer
192. Heiner, Robert, E., Jr.
193. Henry, Christian K., Jr.
194. Hicks, Doris Emily James
195. Hicks, Marjorie Lee
196. Hillaire, Lena Cultee
197. Hillsbery, Edward I.
198. Hillsbery, Keith E.
199. Hjorten, S. Elizabeth Miles
200. Hobucket, Glenn G.
201. Hoh, Dorothy McLeod
202. Holden, Virginia
203. Holland, Lula Elliott
204. Holloway, Marian Law
205. Howeattle, Charles A.
206. Howeattle, Nathan Pickernell
207. Hudson, Floyd
208. Hudson, Pansy Howeattle
209. Hudson, Theodore, Sr.
210. Hudson, Theodore, Jr.
211. Hukkala, Daisy Mumby
212. Hunter, Katie
213. Hyasman, Ellen Heath
214. Iyall, Dorothy
215. Iyall, Hattie J.
216. Jackson, Charles, T. Millett
217. Jackson, Cleveland Barry
218. Jackson, James
219. Jackson, Johnny
220. Jackson, Louise Jurhs
221. Jackson, Oliver
222. Jacobs, Christine Millett
223. Jaime, Donna
224. James, Russell Philipp
225. Jantschar, Ruth
226. Johns, Brenda Faye
227. Johns, Harvey
228. Johns, Louise Napoleon
229. Johns, Vance, Jr.
230. Johnson, Ferrill
231. Johnson, Rachel E. Goodwin
232. Johnstone, Marguerite Law
233. Jones, Bernice Pullen
234. Jones, Hazel
235. Jones, Lindberg
236. Judson, Mildred E. Prince
237. Jurhs, Alvin L.
238. Kalama, Charlotte Penn
239. Kalander, Ida Reinertsen
240. Kalashian, Alice B.
241. Kallappa, Josephine
242. Kauttu, C. Henry Josephson
243. Kelley, Anna Marie
244. Kelly, Glara Chenois
245. Kelly, Maggie J.
246. Kelly, Sidney B.
247. Kelly, Tom
248. Kench, Adele Martin
249. King, Florence Cos
250. Kintanak, Violet Hudson
251. Kirkpatrick, Adah West
252. Klatush, Alice R. Hudson
253. Koehler, Helen Blakeslee
254. Koontz, Anna M. Elliott
255. Lagergren, Alice C. Prior
256. Landry, Myrtle Charley
257. Law, Robert W.
258. Lawrence, Iva Tyler
259. Leatham, Mary Heiner
260. Lee, Helen
261. Lee, Warren
262. Lewis, Alfred Lincoln
263. Lewis, Hattie
264. Logan, Flora Shale
265. Logan, Howard, Jr.
266. Logan, Larry Wayne
267. Lorton, Catherine
268. Lutts, Florence Williams
269. Lynch, Jesse Charles
270. Lynch, Jesse G.
271. Lynch, Monty
272. Mansfield, Kathleen Rubens
273. Marcus, Arthur Dean
274. Marcus, Donald Wayne
275. Marcus, Thomas D., Jr.
276. Markishtum, Frieda Penn
277. Martin, Arthur
278. Martin, Mary Jane
279. Martin, Phillip E.
280. Martin, Rose Marie Purdy
281. Martinez, Mary Lou Penn
282. Marx, Ada Black
283. Mason, Allen
284. Mason, Calvin

285. Mason, Johnny H.
286. Mason, Sam Charles
287. Masten, Alice Elsie Cole
288. Mathes, Linda
289. Matthies, Kathleen Ward
290. Maynard, Catherine Ahto
291. McBride, Allen
292. McBride, Blanche Shale
293. McBride, Ernest
294. McBride, Martha J.
295. McCreery, Sandra Lee Marcus
296. McCrory, Francis
297. McCrory, Sharon Lee Simmons
298. McGhee, Viola A. George
299. McKenney, Hazel Charley
300. Millett, Judy J.
301. Millett, William S.
302. Minsker, Mary Miles
303. Mitchell, Helen
304. Moberg, Josephine Hope Miles
305. Morganroth, Chris, Sr.
306. Morganroth, Chris E., III
307. Mounts, Frank Wells
308. Mounts, Gilbert F.
309. Mowitch, Clifford
310. Napoleon, Frank Wells
311. Napoleon, Loretta
312. Narvaez, Winifred Pickernell
313. Neuert, J. Lingerfelter
314. Newton, Alice Shale
315. Nichols, Laura Starr
316. Niemi, Joan Marie Peterson
317. Norton, Phyllis
318. Nunes, Ellen Amelia
319. Nunes, Lillian Ellen
320. Nunes, Loretta Jean
321. Obi, Cecilia
322. Obi, Hazel
323. Obi, Kilbane
324. Oliver, Emmett S.
325. Oliver, James R.
326. Olsen, Lester F.
327. Paaso, Florence Elliott
328. Palmateer, Patricia Cole
329. Parker, Marion E.
330. Parker, Meredith
331. Payne, Kenneth
332. Payne, Richard W.
333. Penn, Alvin Steve
334. Penn, Christian, Jr.
335. Penn, Earl
336. Penn, Pearl
337. Penn, Ronald Spencer
338. Penn, Ruth
339. Penn, William B.
340. Persson, Fridolph Hilman
341. Pete, Jesse
342. Pete, Oscar H.
343. Pete, Walter
344. Peters, Calvin J.
345. Petersen, Carolyn M.
346. Peterson, Amelia L. Alden
347. Peterson, Beverly Davis
348. Peterson, Helen
349. Peterson, Wendell D.
350. Petit, Andrew J.
351. Petit, Douglas
352. Petit, Frank H.
353. Petit, Mary Barichio
354. Petit, Norris A.
355. Petit, Norris Donald
356. Petit, Paul E.
357. Petit, Wilfred D.
358. Pickernell, David L.
359. Pickernell, Clarence F.
360. Pickernell, Edward A. (Wiley)
361. Pickernell, Ellen G.
362. Pickernell, Frank
363. Pickernell, Gerald
364. Pickernell, Lorilee Youckton
365. Pickernell, Richard E.
366. Pickernell, Sally Nakamato
367. Pickernell, William N.
368. Pikutack, Hattie Hayden
369. Pinkham, Justin
370. Polacek, Ira
371. Pope, Robert
372. Pope, Rose Chenois
373. Pullen, Douglas Sr.
374. Pullen, Lillian Payne Penn
375. Pulsifer, Rena M.Heck
376. Purdy, Dave
377. Purdy, Dorothy Taylor
378. Purdy, Rose B. Snell
379. Ralston, Shirley Mae Charley
380. Ramirez, Nellie
381. Reaume, Mary Lou Chandler
382. Reed, Albert H.
383. Reed, Alvina Black
384. Reed, Benjamin A.

385. Reed, Bennett, B.
386. Reed, Charles G.
387. Reed, Loyal Clark
388. Reinertsen, E. E. Goodell
389. Reinertsen, Henry G.
390. Reinertsen, Jack
391. Reinertsen,Theodore
392. Revay, Martin
393. Rexford, Catherine Walkowsky
394. Rhoades, Annie Clark
395. Rhoades, Carlton Lewis
396. Richards, Nellie W.
397. Riffe, Leslie J.
398. Riley, Karen Sotomish
399. Robertson, Elizabeth Davis
400. Robertson, Mabel Balch
401. Robinson, Josephine H.
402. Robinson, Leonard P.
403. Robinson, Rosemary George
405. Rosander, Ida Jack
406. Rosander, Kenneth J.
407. Rosander, Leonard
408. Rosander, Mollie Charley
409. Rosander, Pearl Cultee
410. Rosenquist, Charlotte Cultee
411. Rubens, Christian K.
412. Rubens, Joseph F.
413. Sagurdo, Verna
414. Sailto, Bud
415. Sailto, John Morton
416. Salakike, Clayton W.
417. Sam, Casper, J., Sr.
418. Sam,Harry S.
419. Sam, Loretta Charles
420. Sampson, Wilbert O. Sr.
421. Sanders, James
422. Sanders, Sidney
423. Sansom, Earl L.
424. Sansom, Frank
425. Sansom, John R.
426. Sasticum, Lorraine Corwin
427. Saunders, Mary L. Phillips
428. Saux, Frederick W.
429. Saux, Geraldine M.
430. Sawatari, Geraldine Gill
431. Scheibel, Violet Brenner
432. Shale, Irene Charley
433. Shale, John Jr.
434. Shale, Leta Rose
435. Shale,Warren C., Jr.
436. Shaw, Leonard
437. Shefler, Lillian Salakike
438. Shepherd, Carolyn M. Peterson
439. Simmons, Euland D.
440. Simmons, Lucille Cultee
441. Simmons, Mike
442. Skahan, Antone R.
443. Skahan, Stella James
444. Slade, Daisy Borg
445. Slade, Mary Ann Goodwin
446. Sotomish, Quentin
447. Sotomish, Sarah Sam
448. Smith, Agnes Cox
449. Smith, Annette, Sanchez
450. Smith, Arthur L.
451. Smith, Eileen, E.
452. Smith, Flora Wain
453. Smith, Gary E.
454. Smith, Sidney
455. Snell,Angeline Charley
456. Snell, Florence Elliott
457. Snell, Robert Sr.
458. Snider,Clifford E.
459. Sohol, Frances Elliott
460. Souvenir, Mary Elliott
461. Starr, Anna M. Bradford
462. Starr, Violet S.
463. Stefano, I. St.Clair P. Reed
464. Stephan, Edson M.
465. Stephan, Martha
466. Stewart, Emma Woods
467. St. Germain, Barney M.
468. Stone, Albert A.
469. Strom,Donald E.
470. Strom, Hazel Pete
471. Stump, Richard A.
472. Sund, Aldolph
473. Swan, Ruth Anderson
474. Syre, David R.
475. Taylor, Julian Bell Alden
476. Thomas, Maybelle Cultee
477. Thomas, Vida Ward
478. Thompson, Irene Youckton
479. Tobin, Kenneth A.
480. Torrez, Ruby Ellen Reed
481. Turner, Charlotte A. Mason
482. Turner, Cherine B.
483. Underwood, Byrdeen
484. Underwood, Hazel Purdy Pope
485. Underwood, Robert, Sr.

Filed 10/18/71

IN THE UNITED STATES COURT OF CLAIMS

HELEN MITCHELL, an allottee of the Quinault Reservation, and 530 other allottees listed on Attachment A hereto; the QUINAULT ALLOTTEES ASSOCIATION; and the QUINAULT TRIBE; on their own behalves and on behalf of ALL ALLOTTEES of the Quinault Reservation or their successors, Plaintiffs,	)	
v.	)	No. 73-[illegible]
THE UNITED STATES OF AMERICA, Defendant.	)	

PETITION

(Reforestation Claim)

This is an action to recover money damages from the defendant, arising from its management and disposition of the property of the plaintiffs. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1491 and 1505.

1. Plaintiff Helen Mitchell and the 530 other plaintiffs named in Attachment A hereto are Indians who received trust allotments on the Quinault Indian Reservation, Washington, or are the successors of such Indians. Plaintiffs are predominantly Quinault Indians, but also include Queets, Quileute, Hoh, Chehalis, Cowlitz, Chinook and other Indians.

2. The Quinault Allottees Association is an unincorporated association consisting of the allottees described in the preceding paragraph. The Association was formed in 1968 for the purpose of representing the interests of all of the allottees of the Quinault Reservation, or their successors. Plaintiffs know the names of some 1,450 of the original allottees or their successors, but there are many more names which plaintiffs do not know. The Association's governing body is the Quinault Allottees Committee, and Chairman of the Committee is plaintiff Helen Mitchell. The Secretary of the Interior has from time to time recognized the Committee as representing all of the allottees of the Quinault Reservation.

3. The Quinault Tribe is an Indian Tribe, which has been in existence since time immemorial, and which has sovereignty over the Quinault Reservation. Its basic relationship with the defendant is established by the Treaty of Olympia, paragraph 5 below.

4. The class on whose behalf the plaintiffs sue consists of all allottees of the Quinault Reservation, or their successors, plus the Quinault Tribe in its capacity of owner of land and timber damaged by defendant's conduct as alleged herein. The class is so numerous that joinder of all members is impractical; the questions of law as to liability are common to the entire class; the claims and defenses of the plaintiffs are typical of the claims and

defenses of the class; and the representative plaintiffs will fairly and adequately protect the interests of the class. Further, the prosecution of separate actions by individual members of the class would create a risk both of inconsistent and varying adjudications with respect to individual members of the class establishing incompatible judicial standards, and of prejudicing individual members of the class whose interests would be substantially impaired by the result in this suit. Further, the interests of those members of the class who are not named plaintiffs cannot as a practical matter be adjudicated with finality except through a class action. Further, the claims presented herein arise out of the management of the Quinault Forest, which the defendant managed in many respects as a single entity.

5. Under the Treaty of Olympia, 12 Stat. 971 (1859), the Quinault and Quileute Tribes ceded all their land in the country theretofore occupied by them on the Pacific coast of Washington. The Treaty provided that:

> "Article II. There shall, however, be reserved, for the use and occupation of the tribes and bands aforesaid, a tract or tracts of lands sufficient for their wants within the Territory of Washington, to be selected by the President of the United States, and hereafter surveyed or located and set apart for their exclusive use, and no white man shall be permitted to reside thereon without permission of the tribe and of the superintendent of Indian Affairs or Indian agent.....

"* * *

"ARTICLE VI. The President ... may consolidate them with other friendly tribes or bands ... and he may further, at his discretion, cause the whole or any portion of the lands to be reserved, or of such other land as may be selected in lieu thereof, to be surveyed into lots, and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable."

6. The sixth article of the Treaty with the Omahas, 10 Stat. 1043, 1044-5 (1854), referred to in the Quinault Treaty, provides as follows:

"ARTICLE 6. The President may, from time to time, at his discretion, cause the whole or such portion of the land hereby reserved, as he may think proper, or of such other land as may be selected in lieu thereof, as provided for in article first, to be surveyed into lots, and to assign to such Indian or Indians of said tribe as are willing to avail of the privilege, and who will locate on the same as a permanent home, if a single person over twenty-one years of age, one-eighth of a section; to each family of two, one quarter section; to each family of three and not exceeding five, one half section; to each family of six and not exceeding ten, one section; and to each family over ten in number, one quarter section for every additional five members. And he may prescribe such rules and regulations as will insure to the family, in case of the death of the head thereof, the possession and enjoyment of such permanent home and the improvements thereon. And the President may, at any time, in his discretion, after such person or family has made a location on the land assigned for a permanent home, issue a patent to such person or family for such assigned land,

> conditioned that the tract shall not be aliened or leased for a longer term than two years; and shall be exempt from levy, sale, or forfeiture, which conditions shall continue in force, until a State constitution, embracing such lands within its boundaries, shall have been formed, and the legislature of the State shall remove the restrictions. And if any such person or family shall at any time neglect or refuse to occupy and till a portion of the lands assigned and on which they have located, or shall rove from place to place, the President may, if the patent shall have been issued, cancel the assignment, and may also withhold from such person or family, their proportion of the annuities or other moneys due them, until they shall have returned to such permanent home, and resumed the pursuits of industry; and in default of their return the tract may be declared abandoned, and thereafter assigned to some other person or family of such tribe, or disposed of as is provided for the disposition of the excess of said land....No State legislature shall remove the restrictions herein provided for, without the consent of Congress."

The State of Washington was admitted into the Union in 1889, 25 Stat. 676. The state legislature has not removed the restrictions provided for in the above-quoted Article 6, nor has Congress consented to the removal of the restrictions.

7. On November 4, 1873, 1 Kapp. 923, President U.S. Grant by Executive Order established the Quinault Reservation with its present boundaries "for the use of the Quinaielt, Quillehute, Hoh, Quit, and other tribes of fish-eating Indians on the Pacific Coast...." Since 1874 the Quinault Indian Reservation has retained its outer boundaries without change. It comprises some 200,000 acres, including

all of Lake Quinault and 20 miles of tidelands along the ocean, and was originally heavily forested throughout.

8. The Tribe remained the sole owner of the Reservation until about 1905. Then, pursuant to the above-quoted Treaty and Executive Order, the General Allotment Act of 1887, 24 Stat. 388, 25 U.S.C. § 331, and the Act of March 4, 1911, 36 Stat. 1345, defendant began to allot the Reservation to the members of the Tribe and other Indians. By 1933, the Reservation was completely allotted. There were over 2,300 allotments, typically 80 acres in size, and covered with valuable timber.

9. Each allottee received a deed, signed in the name of the President of the United States, containing language pursuant to Sec. 5 of the General Allotment Act, as amended, 25 U.S.C. § 348, that the United States will hold the allotment for the period of 25 years,

> "... in trust for the sole use and benefit of the Indian ... or in case of his decease, of his heirs ... and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever ... ."

The trust period of 25 years was extended from time to time, see 25 U.S.C. § 391, and then extended indefinitely by Sec. 2 of the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. § 462.

10. Pursuant to the Quinault Treaty, the Executive Order of 1873, the General Allotment Act of 1887, and the Act of March 4, 1911, the defendant has a fiduciary duty to the allottees to manage their lands and timber prudently, until the trust period ends. See also the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. §§ 461 ff., especially § 466, directing the Secretary of the Interior to make regulations for the management of Indian forestry units on a sustained yield basis; and 41 Stat. 415 (1920), 25 U.S.C. § 413, authorizing the Secretary to collect fees for defendant's services. Defendant's duty is in part recognized and embodied in the Secretary's Forestry Regulations, 25 C.F.R. Part 141.

11. The Tribe owns a few small parcels of land, totalling about 4,000 acres, some as a result of restorations by Congress, see, e.g., 73 Stat. 427 and 76 Stat. 913. All of the land and timber owned by the Tribe is held in trust by the defendant for the Tribe, and so long as the trust continues, the defendant has a fiduciary duty to manage such lands and timber prudently. This duty is recognized in 60 Stat. at 1055-6 (1946), Sec. 24; and see 25 U.S.C. § 466, directing the Secretary of the Interior to make regulations for the management of Indian forestry units on a sustained yield basis; and 25 U.S.C. § 413, authorizing the Secretary to collect fees for defendant's services. Defendant's duty is in part recognized and

embodied in the Secretary's Forestry Regulations, 25 C.F.R. Part 141.

12. The Indian sovereignty over the Reservation lies in the Quinault Tribe. The membership of the Tribe consists of "blood members" (persons of at least one-quarter Quinault or Queets blood) and "affiliated" members (persons of at least one-quarter Quileute, Hoh, Chehalis, Chinook or Cowlitz blood who own a trust interest in an allotment on the Reservation, and who reside on or near the Reservation). Many allottees are blood or affiliated members of the Tribe. However, many other allottees do not live on or within the required distance of the Reservation and so are ineligible to be members.

13. The allottees as such were totally unorganized until 1968. The Tribe has always been organized, but it could not, and did not, represent the allottees.

14. The typical allottee, for lack of education, experience and capacity to understand, relies completely on the defendant to manage his land and timber prudently, and to obtain the fair market price therefor when sold. The defendant is well aware of this reliance.

15. In 1916, after the Reservation was partially allotted, the defendant caused the timber on the Reservation to be inventoried, and logging began shortly after. The first long-term logging contract was let in 1920. By 1950, the southern half of the Reservation had been logged or was in the process of being logged under long-term contracts. Still unlogged were the Queets, Taholah and Crane Creek Units, comprising about 45,000, 30,000 and 35,000 acres respectively, in the northern half of the Reservation.

16. Beginning around 1946, in order to arrange for the logging of these three remaining units, the defendant set about gathering powers of attorneys from the owners of allotments in the Queets, Taholah, and Crane Creek Units, authorizing the defendant to enter into long-term logging contracts. Many allottees were told or encouraged to believe that unless they signed the powers, their timber would be left out of the logging contracts, and the Secretary might not permit it to be logged in their lifetimes. The defendant's employees obtained signatures without adeqaute or accurate explanation of the facts and the alternatives available, and with misrepresentation, and with undue influence. Plaintiffs were incapable of making an intelligent decision whether to sign the powers, and signed only in reliance on defendant's representation that it would be

in their best interests to do so.

17. Pursuant to the aforesaid powers of attorneys and to its powers as trustee of the plaintiffs' land, the defendant, acting through the Superintendent of the Taholah Indian Agency, entered into a contract with the Aloha Lumber Company on April 26, 1950, covering the Taholah Unit. Under this contract, Aloha purchased the timber on all allotments within the boundaries of the Taholah Unit and for which the Secretary had a power of attorney, and agreed to log it over the next 29 years. This contract will terminate in 1979.

18. The Crane Creek Unit contract was entered into with Rayonier, Inc., on June 18, 1952. It was in essential respects similar to the Taholah Unit contract, except that the term was 34 years, so that it will terminate in 1986.

19. The Queets Unit, comprising about 45,000 acres, was put up for bids, but no bids were received. Consequently, no long-term logging contract was let covering that unit, and logging since 1950 has been on an allotment-by-allotment basis. The defendant encouraged individual allottees in that unit to sell their land in fee, and discouraged or prohibited sales of timber only, and as a consequence, only about 5,700 acres of trust allotments with merchantable timber still remain in the Queets Unit, the rest having been sold to non-Indians.

20. The defendant's management of the plaintiff's land, to the extent it failed to arrange for proper rehabilitation and reforestation of cutover land, and for proper care of growing timber, was in breach of its fiduciary duty to the allottees and the Tribe. As a result, the volume of timber owned by the allottees and the Tribe failed to increase from year to year at the rate it should; they suffered loss of property without just compensation, and were otherwise damaged.

WHEREFORE, the plaintiffs are entitled to recover such damages as the proofs may show are proper and as their interests may appear, together with interest as such or as part of just compensation, and such other relief as this Court may deem proper.

Respectfully submitted,

Charles A. Hobbs
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Washington, D.C. 20006

WILKINSON, CRAGUN & BARKER
Jerry C. Straus
Charles H. Gibbs, Jr.

Of Counsel

ATTACHMENT A

List of Plaintiffs, Mitchell v. United States

1. Adams, Agnes Skahan
2. Ahto, Raymond
3. Alden, Lee F.
4. Alexander, Phebe Halbert
5. Allebaugh, Rose M. Hoveland
6. Allen, Caroline Millett
7. Allen, Cora Walters Johns
8. Allen, Janell J.
9. Ancheta, Louise G.
10. Andy, Cynthia Roberta Davis
11. Armas, Tessie M. Pickernell
12. Aronson, Daryll C.
13. Aronson, Myron
14. Asman, Mrs. Rose Walkowsky
15. Baar, Rose Corwin
16. Babic, Helen Williams
17. Back, Charlene Blue
18. Bailey, Evelyn Jackson Ward
19. Bailey, Geraldine Connors
20. Baker, Harry D.
21. Baker, T. Beatrice Charley
22. Baker, Vernon F.
23. Balch, James
24. Bange, Lila G.
25. Baranzelli, T. Christensen
26. Bastian, James L.,Jr.
27. Beckwith, Ernest
28. Beckwith, Leslie Warren
29. Beckwith, Richard P.
30. Beckwith, Robert E.
31. Bennett, P. Ann Pickernell
32. Bennett, Walter F.
33. Bergman, Clara Heiner
34. Bertrand, Gladys Goodwin
35. Bishop, Anita E. Armstrong
36. Black, Beatrice Pullen
37. Black, Ethel Payne
38. Black, George
39. Black, Glenn
40. Black, Joseph Calvin
41. Black, Roy, Sr.
42. Black, Vern
43. Boldt, G. Louise Elliott
44. Boome, Jennie Martin
45. Borowski. S. Collen Sotomish
46. Bowechop, Frances
47. Bowechop, H. Mason Saux
48. Bowechop, Harry
49. Boyer, L. Rose Alden
50. Boyer, Martha
51. Bradford, Gene W.
52. Bremmer, Olive Gracey
53. Brignone, Antone
54. Brignone, Nora S.
55. Brown, Gladys
56. Brown, J. Elizabeth Hoveland
57. Brown, Mary Cultee
58. Bryan, Norma Penn
59. Bryson, James W.
60. Bryson, Jane Strom
61. Buchanan, Katherine L.
62. Bumgarner, Bernard
63. Bumgarner, Mildred Slade
64. Bumgarner, Nina Charley
65. Bunn, V. Rosetta Bowechop
66. Burchett, Jessie Miles
67. Burns, Venita Woods
68. Butler, Charles
69. Butler, Delores Gill
70. Butler, Ruth Sam
71. Cannard, D. C. Van Valkenburg
72. Capoeman, Felix E.
73. Capoeman, Mabel
74. Capoeman, Norman
75. Carlson, Clarence G.
76. Case, Lincoln
77. Castillo, Ruby Sanders
78. Charles, Mary Ann Heck
79. Charles, Paul A.
80. Charley, Benjamin,Jr.
81. Charley, Bennie, Sr.
82. Charley, Edwin
83. Charley, Elfrieda Strom
84. Charley, Katherine

85. Charley, Stanley Arlee D.
86. Chartraw, Theodora Holden
87. Chenois, Daniel
88. Chenois, Marguerite M.
89. Chidester, Thurman L.
90. Chisholm, Ethel Ahto
91. Choate, Sarah L. Miller
92. Christian, Evelyn D. Kelly
93. Christiansen, S. Morganroth
94. Clark, J. Van Mechelen
95. Cole, Bryan
96. Cole, Elizabeth J.
97. Comenout, Dollietta Hyasman
98. Comenout, William Gerald
99. Cooper, Edward H.
100. Cooper, Mabel Beckwith
101. Cooper, Ramona Penn
102. Corwin, Ella Williams
103. Cowan, Rilla E. Williams
104. Cox, Mabel
105. Crawford, Carol M. Cole
106. Cultee, Alvin F.
107. Cultee, Bernice Chenois
108. Cultee, Cliff A.
109. Cultee, Ira Guy
110. Cultee, Tracy Charley
111. Curley, Jessie Saux
112. Davis, Earl George
113. Davis, Preston G.
114. Davy, Ida Walkowsky
115. Deguire, Peter J.
116. De La Cruz, K. Williams Penn
117. De Nobrega, Esther Pete
118. De Roche, Alice Marie James
119. Dick, Theresa Capoeman
120. Dieckhoff, Virginia Capoeman
121. Ditton, Elizabeth Shaw
122. Dominick, John R.
123. Duncan, Louise J.
124. Ebling, Edna Lane
125. Edison, Sigurd A., Jr.
126. Elliott, Albert G.
127. Elliott, Brian D.
128. Elliott, Donald R.
129. Elliott, Harry George
130. Elliott, Henry C., Jr.
131. Elliott, Joseph Howard
132. Elliott, Phillip J.
133. Elliott, Ralph George
134. Elvrum, Betty
135. Eselin, Marie George
136. Farnsworth, E. J. Griggs
137. Farron,Narcisse High
138. Figg, Alicia Shale
139. Fogarty, C. Koford Loggins
140. Foster, Marvella Penn
141. Fowler, Molly K. Price Brown
142. Frank, Ella
143. Fredericksen, James J.
144. Frederickson, Nancy E.
145. French, G. Hobucket California
146. Fryberg, Rose E. Cultee
147. Garfield, Billy Alexander
148. Garrick, Christina Penn
149. George, Calvin
150. George, Clarence
151. George, Edna Marie
152. George, Frank A.
153. Gill, Alice B. M. Ross Stump
154. Goodell, Willard Otto
155. Goodwin, Thomas A.
156. Green, Everett
157. Green, Pauline Campbell
158. Gregg, Dorothy Halbert
159. Gross, Gloria J. Chatman
160. Grover, Tillie Comenout
161. Gunnels, Shirley Davis
162. Hakki, Frances Emma
163. Halbert, Hilary H., Jr.
164. Halbert, Sidney E.
165. Halbert, Vernon S.
166. Hale, George F.
167. Hale, Secena Oralee
168. Hall, Clara Youckton
169. Hall, Frank
170. Hall, Grace Charley
171. Hall, Lawrence James, Jr.
172. Hall, Ronald Oscar
173. Hansen, Theodora
174. Harlow, Harriet Millett
175. Harp, James.
176. Harrison, Helen C.
177. Hartstrom, Mildred Halbert
178. Hatch, Ezra Zane
179. Hawkes, Harold L.
180. Hawkes, J. Sansom Sampson
181. Hawkes, Leonard W., Sr.
182. Hawks, L. Cultee Blackburn
183. Hayden, Elmer
184. Hayden, Eva Williams

185. Hayden, John Jr.
186. Heck, Edith
187. Heck, Lena Josephine
188. Heck, Lily Hayden
189. Heiner, Frank W.
190. Heiner, George C.
191. Heiner, Harold Elmer
192. Heiner, Robert, E., Jr.
193. Henry, Christian K., Jr.
194. Hicks, Doris Emily James
195. Hicks, Marjorie Lee
196. Hillaire, Lena Cultee
197. Hillsbery, Edward I.
198. Hillsbery, Keith E.
199. Hjorten, S. Elizabeth Miles
200. Hobucket, Glenn G.
201. Hoh, Dorothy McLeod
202. Holden, Virginia
203. Holland, Lula Elliott
204. Holloway, Marian Law
205. Howeattle, Charles A.
206. Howeattle, Nathan Pickernell
207. Hudson, Floyd
208. Hudson, Pansy Howeattle
209. Hudson, Theodore, Sr.
210. Hudson, Theodore, Jr.
211. Hukkala, Daisy Mumby
212. Hunter, Katie
213. Hyasman, Ellen Heath
214. Iyall, Dorothy
215. Iyall, Hattie J.
216. Jackson, Charles, T. Millett
217. Jackson, Cleveland Barry
218. Jackson, James
219. Jackson, Johnny
220. Jackson, Louise Jurhs
221. Jackson, Oliver
222. Jacobs, Christine Millett
223. Jaime, Donna
224. James, Russell Philipp
225. Jantschar, Ruth
226. Johns, Brenda Faye
227. Johns, Harvey
228. Johns, Louise Napoleon
229. Johns, Vance, Jr.
230. Johnson, Ferrill
231. Johnson, Rachel E. Goodwin
232. Johnstone, Marguerite Law
233. Jones, Bernice Pullen
234. Jones, Hazel
235. Jones, Lindberg
236. Judson, Mildred E. Prince
237. Jurhs, Alvin L.
238. Kalama, Charlotte Penn
239. Kalander, Ida Reinertsen
240. Kalashian, Alice B.
241. Kallappa, Josephine
242. Kauttu, C. Henry Josephson
243. Kelley, Anna Marie
244. Kelly, Glara Chenois
245. Kelly, Maggie J.
246. Kelly, Sidney B.
247. Kelly, Tom
248. Kench, Adele Martin
249. King, Florence Cos
250. Kintanak, Violet Hudson
251. Kirkpatrick, Adah West
252. Klatush, Alice R. Hudson
253. Koehler, Helen Blakeslee
254. Koontz, Anna M. Elliott
255. Lagergren, Alice C. Prior
256. Landry, Myrtle Charley
257. Law, Robert W.
258. Lawrence, Iva Tyler
259. Leatham, Mary Heiner
260. Lee, Helen
261. Lee, Warren
262. Lewis, Alfred Lincoln
263. Lewis, Hattie
264. Logan, Flora Shale
265. Logan, Howard, Jr.
266. Logan, Larry Wayne
267. Lorton, Catherine
268. Lutts, Florence Williams
269. Lynch, Jesse Charles
270. Lynch, Jesse G.
271. Lynch, Monty
272. Mansfield, Kathleen Rubens
273. Marcus, Arthur Dean
274. Marcus, Donald Wayne
275. Marcus, Thomas D., Jr.
276. Markishtum, Frieda Penn
277. Martin, Arthur
278. Martin, Mary Jane
279. Martin, Phillip E.
280. Martin, Rose Marie Purdy
281. Martinez, Mary Lou Penn
282. Marx, Ada Black
283. Mason, Allen
284. Mason, Calvin

285. Mason, Johnny H.
286. Mason, Sam Charles
287. Masten, Alice Elsie Cole
288. Mathes, Linda
289. Matthies, Kathleen Ward
290. Maynard, Catherine Ahto
291. McBride, Allen
292. McBride, Blanche Shale
293. McBride, Ernest
294. McBride, Martha J.
295. McCreery, Sandra Lee Marcus
296. McCrory, Francis
297. McCrory, Sharon Lee Simmons
298. McGhee, Viola A. George
299. McKenney, Hazel Charley
300. Millett, Judy J.
301. Millett, William S.
302. Minsker, Mary Miles
303. Mitchell, Helen
304. Moberg, Josephine Hope Miles
305. Morganroth, Chris, Sr.
306. Morganroth, Chris E., III
307. Mounts, Frank Wells
308. Mounts, Gilbert F.
309. Mowitch, Clifford
310. Napoleon, Frank Wells
311. Napoleon, Loretta
312. Narvaez, Winifred Pickernell
313. Neuert, J. Lingerfelter
314. Newton, Alice Shale
315. Nichols, Laura Starr
316. Niemi, Joan Marie Peterson
317. Norton, Phyllis
318. Nunes, Ellen Amelia
319. Nunes, Lillian Ellen
320. Nunes, Loretta Jean
321. Obi, Cecilia
322. Obi, Hazel
323. Obi, Kilbane
324. Oliver, Emmett S.
325. Oliver, James R.
326. Olsen, Lester F.
327. Paaso, Florence Elliott
328. Palmateer, Patricia Cole
329. Parker, Marion E.
330. Parker, Meredith
331. Payne, Kenneth
332. Payne, Richard W.
333. Penn, Alvin Steve
334. Penn, Christian, Jr.
335. Penn, Earl
336. Penn, Pearl
337. Penn, Ronald Spencer
338. Penn, Ruth
339. Penn, William B.
340. Persson, Fridolph Hilman
341. Pete, Jesse
342. Pete, Oscar H.
343. Pete, Walter
344. Peters, Calvin J.
345. Petersen, Carolyn M.
346. Peterson, Amelia L. Alden
347. Peterson, Beverly Davis
348. Peterson, Helen
349. Peterson, Wendell D.
350. Petit, Andrew J.
351. Petit, Douglas
352. Petit, Frank H.
353. Petit, Mary Barichio
354. Petit, Norris A.
355. Petit, Norris Donald
356. Petit, Paul E.
357. Petit, Wilfred D.
358. Pickernell, David L.
359. Pickernell, Clarence F.
360. Pickernell, Edward A. (Wiley)
361. Pickernell, Ellen G.
362. Pickernell, Frank
363. Pickernell, Gerald
364. Pickernell, Lorilee Youckton
365. Pickernell, Richard E.
366. Pickernell, Sally Nakamato
367. Pickernell, William N.
368. Pikutack, Hattie Hayden
369. Pinkham, Justin
370. Polacek, Ira
371. Pope, Robert
372. Pope, Rose Chenois
373. Pullen, Douglas Sr.
374. Pullen, Lillian Payne Penn
375. Pulsifer, Rena M. Heck
376. Purdy, Dave
377. Purdy, Dorothy Taylor
378. Purdy, Rose B. Snell
379. Ralston, Shirley Mae Charley
380. Ramirez, Nellie
381. Reaume, Mary Lou Chandler
382. Reed, Albert H.
383. Reed, Alvina Black
384. Reed, Benjamin A.

385. Reed, Bennett, B.
386. Reed, Charles G.
387. Reed, Loyal Clark
388. Reinertsen, E. E. Goodell
389. Reinertsen, Henry G.
390. Reinertsen, Jack
391. Reinertsen,Theodore
392. Revay, Martin
393. Rexford, Catherine Walkowsky
394. Rhoades, Annie Clark
395. Rhoades, Carlton Lewis
396. Richards, Nellie W.
397. Riffe, Leslie J.
398. Riley, Karen Sotomish
399. Robertson, Elizabeth Davis
400. Robertson, Mabel Balch
401. Robinson, Josephine H.
402. Robinson, Leonard P.
403. Robinson, Rosemary George
405. Rosander, Ida Jack
406. Rosander, Kenneth J.
407. Rosander, Leonard
408. Rosander, Mollie Charley
409. Rosander, Pearl Cultee
410. Rosenquist, Charlotte Cultee
411. Rubens, Christian K.
412. Rubens, Joseph F.
413. Sagundo, Verna
414. Sailto, Bud
415. Sailto, John Morton
416. Salakike, Clayton W.
417. Sam, Casper, J., Sr.
418. Sam,Harry S.
419. Sam, Loretta Charles
420. Sampson, Wilbert O. Sr.
421. Sanders, James
422. Sanders, Sidney
423. Sansom, Earl L.
424. Sansom, Frank
425. Sansom, John R.
426. Sasticum, Lorraine Corwin
427. Saunders, Mary L. Phillips
428. Saux, Frederick W.
429. Saux, Geraldine M.
430. Sawatari, Geraldine Gill
431. Scheibel, Violet Brenner
432. Shale, Irene Charley
433. Shale, John Jr.
434. Shale, Leta Rose
435. Shale,Warren C., Jr.
436. Shaw, Leonard
437. Shefler, Lillian Salakike
438. Shepherd, Carolyn M. Peterson
439. Simmons, Euland D.
440. Simmons, Lucille Cultee
441. Simmons, Mike
442. Skahan, Antone R.
443. Skahan, Stella James
444. Slade, Daisy Borg
445. Slade, Mary Ann Goodwin
446. Sotomish, Quentin
447. Sotomish, Sarah Sam
448. Smith, Agnes Cox
449. Smith, Annette, Sanchez
450. Smith, Arthur L.
451. Smith, Eileen, E.
452. Smith, Flora Wain
453. Smith, Gary E.
454. Smith, Sidney
455. Snell,Angeline Charley
456. Snell, Florence Elliott
457. Snell, Robert Sr.
458. Snider,Clifford E.
459. Sohol, Frances Elliott
460. Souvenir, Mary Elliott
461. Starr, Anna M. Bradford
462. Starr, Violet S.
463. Stefano, I. St.Clair P. Reed
464. Stephan, Edson M.
465. Stephan, Martha
466. Stewart, Emma Woods
467. St. Germain, Barney M.
468. Stone, Albert A.
469. Strom,Donald E.
470. Strom, Hazel Pete
471. Stump, Richard A.
472. Sund, Aldolph
473. Swan, Ruth Anderson
474. Syre, David R.
475. Taylor, Julian Bell Alden
476. Thomas, Maybelle Cultee
477. Thomas, Vida Ward
478. Thompson, Irene Youckton
479. Tobin, Kenneth A.
480. Torrez, Ruby Ellen Reed
481. Turner, Charlotte A. Mason
482. Turner, Cherine B.
483. Underwood, Byrdeen
484. Underwood, Hazel Purdy Pope
485. Underwood, Robert, Sr.

486. Van Mechelen, Daniel L.
487. Van Mechelen, Helen Brown
488. Vandervest, Isabelle Hudson
489. Walkowsky, Alvin
490. Walkowsky, Ethel E. Pope
491. Wallerstedt, Bertha Woodruff
492. Ward, Arvie
493. Ward, Margaret
494. Ward, Marion L.
495. Wells, Catherine Gill
496. Whetung, Georgianna Cross
497. Whitaker, Alberta Chenois
498. White, Jessie Provoe
499. Whitish, Rachel Brignone
500. Williams, Charles, R.
501. Williams. Donald E.
502. Williams, Dorris Reed
503. Williams, Iola Penn
504. Williams, Mary Fisher
505. Williams, Priscilla E. Payne
506. Wilson, Robert L.
507. Winkler, Bernice Elsie Hoveland
508. Wolfs, Dolly M. Farrell
509. Woodruff, Fred
510. Woodruff, Russell
511. Woodruff, Sarah Ida Ward.
512. Wright, Sophie Reinertsen
513. Yandell, Pamela Rae
514. Yerkes, Arthur A.
515. Yerkes, Caesar James
516. Youckton, Percy
517. Young, Leonard
518. Young, Lillian Sanders
519. Zollner, Myrtle Shaw
520. Black, Clyde
521. Hayden, John, Sr.
522. Heck, Thomas Ralph
523. Hernandez, Rosemary Pete
524. Jack,Mabel Hayden
525. Jackson, Thomas L.
526. Lagergren, Sally A.
527. Moran, Olive M. Anderson
528. Mounts, Norman U.
529. Penn, Thomas
530. Sherwood,Emily Johns
531. Strong, Anna Mae Rhoades

IN THE UNITED STATES COURT OF CLAIMS

HELEN MITCHELL, et al.,	)	
	)	
Plaintiffs	)	
	)	
v.	)	Docket No. 775-71
	)	
UNITED STATES OF AMERICA	)	
	)	
Defendant.	)	

FILED OCT 9 1972

FIRST AMENDED PETITION

(Accounting Claims)

This is an action to recover money damages from the defendant, arising from its management and disposition of the property of the plaintiffs. This Court has jurisdiction pursuant to 28 U.S.C. §§1491 and 1505.

1. Plaintiff Helen Mitchell and the 530 other plaintiffs named in Attachment A hereto are Indians who received trust allotments on the Quinault Indian Reservation, Washington, or are the successors of such Indians. Plaintiffs are predominantly Quinault Indians, but also include Queets, Quileute, Hoh, Chehalis, Cowlitz, Chinook and other Indians.

2. The Quinault Allottees Association is an unincorporated association consisting of the allottees described in the preceding paragraph. The Association was formed in 1968 for the purpose of representing the interests of all of the allottees of the Quinault Reservation, or their successors. Plaintiffs know the names of some 1,450 of the original allottees or their succesors,

but there are many more names which plaintiffs do not know. The Association's governing body is the Quinault Allottees Committee, and Chairman of the Committee is plaintiff Helen Mitchell. The Secretary of the Interior has from time to time recognized the Committee as representing all of the allottees of the Quinault Reservation.

3. The Quinault Tribe is an Indian Tribe, which has been in existence since time immemorial, and which has sovereignty over the Quinault Reservation. Its basic relationship with the defendant is established by the Treaty of Olympia, paragraph 5 below.

4. The class on whose behalf the plaintiffs sue consists of all allottees of the Quinault Reservation, or their successors, plus the Quinault Tribe in its capacity of owner of land and timber damaged by defendant's conduct as alleged herein. The class is so numerous that joinder of all members is impractical; the questions of law as to liability are common to the entire class; the claims and defenses of the plaintiffs are typical of the claims and defenses of the class; and the representative plaintiffs will fairly and adequately protect the interests of the class. Further, the prosecution of separate actions by individual members of the class would create a risk both of inconsistent and varying adjudications with respect to individual members of the class establishing incompatible judicial standards, and of prejudicing individual members of the class whose interests would be substantially

impaired by the result in this suit. Further, the interests of those members of the class who are not named plaintiffs cannot as a practical matter be adjudicated with finality except through a class action. Further, the claims presented herein arise out of the management of the Quinault Forest, which the defendant managed in many respects as a single entity.

5. Under the Treaty of Olympia, 12 Stat. 971 (1859), the Quinault and Quileute Tribes ceded all their land in the country theretofore occupied by them on the Pacific coast of Washington. The Treaty provided that:

> "Article II. There shall, however, be reserved, for the use and occupation of the tribes and bands aforesaid, a tract or tracts of lands sufficient for their wants within the Territory of Washington, to be selected by the President of the United States, and hereafter surveyed or located and set apart for their exclusive use, and no white man shall be permitted to reside thereon without permission of the tribe and of the superintendent of Indian Affairs or Indian agent....
>
> * * *
>
> "ARTICLE VI. The President...may consolidate them with other friendly tribes or bands...and he may further, at his discretion, cause the whole or any portion of the lands to be reserved, or of such other land as may be selected in lieu thereof, to be surveyed into lots, and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable."

6. The sixth article of the Treaty with the Omahas, 10 Stat. 1043, 1044-5 (1854), referred to in the Quinault Treaty, provides as follows:

> "ARTICLE 6. The President may, from time to time, at his discretion, cause the whole or such portion of the land hereby reserved, as he may think proper, or of such other land as may be selected in lieu thereof, as provided for in article first, to be surveyed into lots, and to assign to such Indian or Indians of said tribe as are willing to avail of the privilege, and who will locate on the same as a permanent home, if a single person over twenty-one years of age, one-eighth of a section; to each family of two, one quarter section; to each family of three and not exceeding five, one half section; to each family of six and not exceeding ten, one section; and to each family over ten in number, one quarter section for every additional five members. And he may prescribe such rules and regulations as will insure to the family, in case of the death of the head thereof, the possession and enjoyment of such permanent home and the improvements thereon. And the President may, at any time, in his discretion, after such person or family has made a location on the land assigned for a permanent home, issue a patent to such person or family for such assigned land, conditioned that the tract shall not be aliened or leased for a longer term than two years; and shall be exempt from levy, sale, or forfeiture, which conditions shall continue in force, until a State constitution, embracing such lands within its boundaries, shall have been formed, and the legislature of the State shall remove the restrictions. And if any such person or family shall at any time neglect or refuse to occupy and till a portion of the lands assigned and on which they have located, or shall rove from place to place, the President may, if the patent shall have been issued, cancel the assignment, and may also withhold from such person or family, their proportion of the annuities or other moneys due them, until they shall have returned to such permanent home, and

> resumed the pursuits of industry; and in default of their return the tract may be declared abandoned, and thereafter assigned to some other person or family of such tribe, or disposed of as is provided for the disposition of the excess of said land....No State legislature shall remove the restrictions herein provided for, without the consent of Congress."

The State of Washington was admitted into the Union in 1889, 25 Stat. 676. The state legislature has not removed the restrictions provided for in the above-quoted Article 6, nor has Congress consented to the removal of the restrictions.

7. On November 4, 1873, 1 Kapp. 923, President U.S. Grant by Executive Order established the Quinault Reservation with its present boundaries "for the use of the Quinaielt, Quillehute, Hoh, Quit, and other tribes of fish-eating Indians on the Pacific Coast...." Since 1874 the Quinault Indian Reservation has retained its outer boundaries without change. It comprises some 200,000 acres, including all of Lake Quinault and 20 miles of tidelands along the ocean, and was originally heavily forested throughout.

8. The Tribe remained the sole owner of the Reservation until about 1905. Then, pursuant to the above-quoted Treaty and Executive Order, the General Allotment Act of 1887, 24 Stat. 388, 25 U.S.C. §331, and the Act of March 4, 1911, 36 Stat. 1345, defendant began to allot the Reservation to the members of the Tribe and other Indians. By 1933, the Reservation was completely allotted. There were over 2,300 allotments, typically 80 acres in size, and covered with valuable timber.

9. Each allottee received a deed, signed in the name of the President of the United States, containing language pursuant to Sec. 5 of the General Allotment Act, as amended, 25 U.S.C. §348, that the United States will hold the allotment for the period of 25 years,

> "...in trust for the sole use and benefit of the Indian...or in case of his decease, of his heirs...and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever...."

The trust period of 25 years was extended from time to time, see 25 U.S.C. §391, and then extended indefinitely by Sec. 2 of the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. §462.

10. Pursuant to the Quinault Treaty, the Executive Order of 1873, the General Allotment Act of 1887, and the Act of March 4, 1911, the defendant has a fiduciary duty to the allottees to manage their lands and timber prudently, until the trust period ends. See also the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. §§461 ff., especially §466, directing the Secretary of the Interior to make regulations for the management of Indian forestry units on a sustained yield basis; and 41 Stat. 415 (1920), 25 U.S.C. §413, authorizing the Secretary to collect fees for defendant's services. Defendant's duty is in part recognized and embodied in the Secretary's Forestry Regulations, 25 C.F.R. Part 141.

11. The Tribe owns a few small parcels of land, totalling about 4,000 acres, some as a result of restorations by Congress, see, e.g., 73 Stat. 427 and 76 Stat. 913. All of the land and timber owned by the Tribe is held in trust by the defendant for the Tribe, and so long as the trust continues, the defendant has a fiduciary duty to manage such lands and timber prudently. This duty is recognized in 60 Stat. at 1055-6 (1946), Sec. 24; and see 25 U.S.C. §466, directing the Secretary of the Interior to make regulations for the management of Indian forestry units on a sustained yield basis; and 25 U.S.C. §413, authorizing the Secretary to collect fees for defendant's services. Defendant's duty is in part recognized and embodied in the Secretary's Forestry Regulations, 25 C.F.R. Part 141.

12. The Indian sovereignty over the Reservation lies in the Quinault Tribe. The membership of the Tribe consists of "blood members" (persons of at least one-quarter Quinault or Queets blood) and "affiliated" members (persons of at least one-quarter Quileute, Hoh, Chehalis, Chinook or Cowlitz blood who own a trust interest in an allotment on the Reservation, and who reside on or near the Reservation). Many allottees are blood or affiliated members of the Tribe. However, many other allottees do not live on or within the required distance of the Reservation and so are ineligible to be members.

13. The allottees as such were totally unorganized until 1968. The Tribe has always been organized, but it could not, and did not, represent the allottees.

14. The typical allottee, for lack of education, experience and capacity to understand, relies completely on the defendant to manage his land and timber prudently, and to obtain the fair market price therefor when sold. The defendant is well aware of this reliance.

15. In 1916, after the Reservation was partially allotted, the defendant caused the timber on the Reservation to be inventoried, and logging began shortly after. The first long-term logging contract was let in 1920. By 1950, the southern half of the Reservation had been logged or was in the process of being logged under long-term contracts. Still unlogged were the Queets, Taholah and Crane Creek Units, comprising about 45,000, 30,000 and 35,000 acres respectively, in the northern half of the Reservation.

16. Beginning around 1946, in order to arrange for the logging of these three remaining units, the defendant set about gathering powers of attorneys from the owners of allotments in the Queets, Taholah, and Crane Creek Units, authorizing the defendant to enter into long-term logging contracts. Many allottees were told or encouraged to believe that unless they signed the powers, their timber would be left out of the logging contracts, and the Secretary might not permit it

to be logged in their lifetimes. The defendant's employees obtained signatures without adequate or accurate explanation of the facts and the alternatives available, and with misrepresentation, and with undue influence. Plaintiffs were incapable of making an intelligent decision whether to sign the powers, and signed only in reliance on defendant's representation that it would be in their best interests to do so.

17. Pursuant to the aforesaid powers of attorneys and to its powers as trustee of the plaintiffs' land, the defendant, acting through the Superintendent of the Taholah Indian Agency, entered into a contract with the Aloha Lumber Company on April 26, 1950, covering the Taholah Unit. Under this contract, Aloha purchased the timber on all allotments within the boundaries of the Taholah Unit and for which the Secretary had a power of attorney, and agreed to log it over the next 29 years. This contract will terminate in 1979.

18. The Aloha Lumber Company contract established stumpage rates for different species of trees and provided for the periodic adjustment of such rates for the duration of the contract's life. In December, 1965, the Commissioner of Indian Affairs established a revised schedule of increased stumpage prices. Aloha's objections were pursued through administrative and judicial channels until an out-of-court settlement was negotiated in 1970. During the course of

this dispute, Aloha paid for the timber in accordance with the increased rate schedules. However, the Secretary ordered that, pending final disposition of Aloha's appeal, increased revenue derived from Aloha's compliance was not to be distributed. The disputed funds were paid into a special account held in escrow by defendant for the timber owners.

19. The Crane Creek Unit contract was entered into with Rayonier, Inc., on June 18, 1952. It was in essential respects similar to the Taholah Unit contract, except that the term was 34 years, so that it will terminate in 1986.

20. The Queets Unit, comprising about 45,000 acres, was put up for bids, but no bids were received. Consequently, no long-term logging contract was let covering that unit, and logging since 1950 has been on an allotment-by-allotment basis. The defendant encouraged individual allottees in that unit to sell their land in fee, and discouraged or prohibited sales of timber only, and as a consequence, only about 5,700 acres of trust allotments with merchantable timber still remain in the Queets Unit, the rest having been sold to non-Indians.

21. The Act of February 14, 1920, 41 Stat. 415, 25 U.S.C. §413, provides as follows:

> "The Secretary of the Interior is hereby authorized, in his discretion, and under such rules and regulations as he may prescribe, to collect reasonable fees to cover the cost of any and all work performed for Indian tribes or for individual Indians, to be paid by vendees, lessees,

> or assignees, or deducted from the proceeds of sale, leases, or other sources of revenue: Provided, That the amounts so collected shall be covered into the Treasury as miscellaneous receipts, except when the expenses of the work are paid from Indian tribal funds, in which event they shall be credited to such funds."

The Secretary's regulations, 25 C.F.R. §141.18, provide:

> "In sales of timber from either allotted or unallotted lands, a reasonable deduction shall be made from the gross proceeds to cover in whole or in part the cost of managing and protecting the forest lands, including the cost of timber sale administration, but not including the costs that are paid from funds appropriated specifically for fire suppression or forest pest control. Unless special instructions have been given by the Secretary as to the amount of the deduction or the manner in which it is to be made, there shall be deducted 10 percent of the gross amount received for timber sold under regular supervision, and 5 percent when the timber is sold in such a manner that little administrative expense by the Indian Bureau is required. Service fees in lieu of administrative deductions shall be determined in a similar manner."

22. Since February 14, 1920, whenever a sale of timber from trust allotments or tribal trust land on the Quinault Reservation has taken place, the Secretary has collected from the proceeds of sale an administrative charge. Currently the charge is 10%, except where an Indian arranges for sale of his own timber, in which case the charge is currently 5%.

COUNT I

23. Defendant has at all times been under a duty, as guardian and trustee of plaintiffs and their property, to prudently manage and administer all sums of plaintiffs' money held by defendant, whether by way of principal or interest, and plaintiffs have been damaged to the extent that defendant has failed to carry out this duty. In particular, defendant has breached this fiduciary duty to plaintiffs in the following instances:

A. The funds held in escrow by defendant in 1965-1970 under the Aloha Lumber and ITT Rayonier contracts, pending resolution of price disputes, were not invested or credited with a reasonable and proper rate of interest.

B. Defendant is under a duty to insure that all funds held in trust for the allottees are distributed exclusively to individuals who are competent to handle such sums in a competitive society. Upon information and belief, plaintiffs allege that, under the logging contracts described above, defendant has failed to follow properly the special procedures established by its own agencies for determining such competency. Consequently, funds were disbursed to incompetent Indians who unwittingly squandered or otherwise depleted their distributive shares in a manner wholly inconsistent with their health and general welfare.

C. Defendant has failed to prudently manage and administer funds held in trust for the Quinault Tribe, and for Indians who are non compos mentis or minors. Upon information and belief, plaintiffs allege that defendant has failed to credit these funds with a proper and reasonable rate of interest; that defendant has failed to cover these interest-bearing funds into the United States Treasury within 30 days of receipt; that defendant has failed to administer these funds in the most productive manner possible; that defendant has wrongfully charged these funds with expenditures for agency and administrative expenses which were the obligation of defendant to bear; that defendant has wrongfully held these funds in noninterest-bearing accounts before being expended or restored to interest-bearing status; that defendant has wrongfully made expenditures with interest-bearing funds when noninterest-bearing funds were available; and that defendant has otherwise mismanaged these funds in numerous ways which shall become apparent as the proofs develop.

D. Defendant is under a duty to disburse money collected for or on behalf of plaintiffs, under the logging contracts described above, quickly and expeditiously. Upon information and belief, plaintiffs allege that defendant has, from time to time, breached this duty by withholding distributions for unreasonably long periods of time.

E. In the exercise of its fiduciary duties, defendant has collected or received, since 1920, various monies, including payments from non-Indians for the purchase of plaintiffs' land and timber, for or on behalf of plaintiffs, or defendant itself has become liable to pay monies to or on behalf of plaintiffs. Defendant has failed to account for its management, handling and disposition of said monies and properties. As a result, plaintiffs have been damaged by having been deprived of the amount of money or value of other property, together with interest thereon, which may be shown to be owing to plaintiffs upon a proper accounting in accordance with the fiduciary duties and the liabilities herein set forth.

COUNT II

24. The administrative charges collected by defendant from sales of plaintiffs' timber have greatly exceeded defendant's properly allocated costs. Plaintiffs are entitled to a refund for the full amount of defendant's unjust enrichment, i.e., the total of administrative fees less administrative costs. As an incident thereto, and in aid of a proper determination of the full extent of defendant's liability to plaintiffs, plaintiffs are entitled to an accounting of the fees collected by defendant, and of the administrative costs claimed by defendant to be properly allocable.

25. Pursuant to Rule 35(b), plaintiffs state that no action on this claim has been taken by Congress or by any other body. In Docket No. 524-69 Horton Capoeman, a Quinault allottee, claimed refund of the administrative charges, but his case was disposed of on the statute of limitations, without reaching the merits. See Opinion, April 16, 1971. Another petition making the same claim was filed in March, 1971, Docket No. 102-71, on behalf of the same class as herein. It is still pending.

WHEREFORE, plaintiffs are entitled to recover such damages as the proofs may show are proper and as their interests may appear, together with interest as such or as part of just compensation; the accountings described in Counts I and II which are necessary in determining the full extent of defendant's liability, and such other relief as this Court may deem proper.

Respectfully submitted,

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WILKINSON, CRAGUN & BARKER
R. Anthony Rogers
Alan I. Rubinstein
of Counsel

IN THE
UNITED STATES COURT OF CLAIMS

HELEN MITCHELL, et al., Plaintiffs, v. THE UNITED STATES OF AMERICA, Defendants.	)	Nos. 772-71, 773-71, 774-71, 775-71

PLAINTIFFS' LIST OF WITNESSES

Pursuant to paragraph 1(d) of the Standard Pretrial Order on Liability (Rule 111), plaintiffs submit the following list of witnesses whom they intend to call in the above-captioned cases. It may be necessary to supplement this list at a later date, and if it is, we will give counsel for defendant prompt notice.

The list of expert witnesses below includes all experts who have done work on the case for plaintiffs and are expected to testify. Plaintiffs, however, are planning to hire two or three additional expert witnesses. If they are hired, we will promptly notify counsel for defendant of the fact.

Plaintiffs also have not determined precisely which persons they intend to call as lay (factual) witnesses. This is largely due to the sheer number of potential witnesses who must be interviewed, but in part due to the fact that counsel for both sides have been unable to complete the taking of depositions.

The uncertainty about witnesses makes it premature to estimate the direct examination time and we would therefore propose to wait until we submit a final list of witnesses before making such an estimate.

As we indicated to the Court earlier, we are planning that the first trial cover the logging contracts claims (Crane Creek and Taholah only), the sawmill claim, the reforestation claim (for the entire reservation), the squandering claim, the Queets Unit claim, and all statute of limitations issues leaving until later the fisheries claim, the accounting claim, and logging contracts claims other than Taholah and Crane Creek.

We plan that the first trial be held in two stages, the first stage in Aberdeen, Washington, for purposes of taking the testimony of all Indian witnesses (and perhaps local BIA witnesses). The testimony of all other witnesses can be taken in Washington, D.C. in the second stage.

Plaintiffs believe that they will be ready for trial by December 1, but suggest that definite trial dates not be set until the Government is in a position to say when it will be ready.

Plaintiffs' current list of witnesses is as

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~~Westec, Inc.~~

WITNESSES

A. Expert	Issues
1. Dr. Verne F. Ray, Ph.D. P.O. Box 586 Port Townsend, Washington 98368 Consulting Anthropologist	Historical; statute of limitations; squandering
2. Milton H. Mater, P.E. Dr. Jean Mater Mater Engineering P.O. Box O 530 S.W. First Street Corvallis, Oregon 97330 Consulting Engineers (Sawmill experts)	Sawmill claim
3. N. D. Terry P.O. Box 34 Amanda Park, Washington 98526 Consulting Forester	Management of land and timber; management of logging contracts
4. Dr. William R. Pierce School of Forestry University of Montana Missoula, Montana 59801 Professor of Forestry and Computer Science	Management of land and timber; management of logging contracts
5. Wesley Rickard Puget Sound Bank Building 1119 Pacific Avenue Tacoma, Washington 98402 Consulting Forester	Management of land and timber; management of logging contracts
6. Peter L. Vaughn 215-A Craighead Apartments Missoula, Montana 59801 Resource Economist	Management of land and timber; management of logging contracts
7. James D. Hall 3106 N.W. Harrison Street Corvallis, Oregon 97330 Fish Biologist	Fisheries claim (second trial)
8. Dr. Brian J. Allee Weyerhaeuser Company 3400 13th Avenue, S.W. Seattle, Washington 98134 Fisheries Scientist	Fisheries claim (second trial)

4-23-75 ? Westat, Inc

5-14-75 w/ Doyle Burke - Expert controls - Seattle

B. Lay (factual) Witnesses	Issues
1. Janet Terry P.O. Box 32 Amanda Park, Washington 98526 Secretary, Quinault Allottees Association	Historical; statute of limitations; squandering
2. Helen Mitchell Route 1, Box 221 Oakville, Washington 98568 Logger; Chairman, Quinault Allottees Association	Historical; statute of limitations; squandering; management of land and timber management of logging contracts
3. Horton Capoeman Taholah, Washington 98587 Retired	Historical; statute of limitations; squandering; management of land and timber management of logging contracts
4. A number of Indian witnesses to be selected later.	Statute of limitations; squandering
5. A number of BIA employees to be selected later.	All issues

Respectfully submitted,

Charles A. Hobbs
Attorney for Plaintiffs

April 15, 1974

IN THE
UNITED STATES COURT OF CLAIMS

HELEN MITCHELL, et al., Plaintiffs, v. THE UNITED STATES OF AMERICA, Defendant.	)	Nos. 772-71, 773-71, 774-71, 775-71

PLAINTIFFS' STATEMENT OF MATERIAL MATTERS OF FACT AS TO WHICH IT IS BELIEVED THAT THERE IS NO SUBSTANTIAL CONTROVERSY

Pursuant to paragraph 1(b) of the Standard Pretrial Order on Liability (Rule 111), plaintiffs submit the following list of material facts as to which they believe that there is no substantial controversy between the parties:

1. The individual plaintiffs are all Indians who received trust allotments on the Quinault Indian Reservation, Washington, or are successors of such Indians.

2. The individual plaintiffs include primarily Indians of Quinault, Queets, Quileute, Hoh, Chehalis, Cowlitz, and Chinook blood, but also include Indians of other tribes who received allotments by inheritance or other means.

3. The Quinault Allottees Association is an unincorporated association which was formed in 1968 and presently consists of approximately 600 of the plaintiffs. The Association's governing body is the Allottees Claims Committee.

4. The Quinault Tribe is an Indian Tribe which has been in existence since time immemorial. It is a plaintiff in these cases and its basic relationship with the defendant is established by the Treaty of 1855 (Treaty of Olympia), 12 Stat. 971.

5. Under the Treaty of Olympia, 12 Stat. 971, the Quinault and Quileute Tribes ceded to the defendant all of their land in the country theretofore occupied by them on the Pacific Coast of Washington.

6. On November 4, 1873, President U.S. Grant by Executive Order, 1 Kapp. 923, established the Quinault Reservation with its present boundaries "for use of the Quinaielt, Qiallehute, Hoh, Quit, and other tribes of fish-eating Indians on the Pacific Coast . . . ."

7. Since 1874 the Quinault Indian Reservation has retained its outer boundaries without change. It comprises some 200,000 acres, including all of Lake Quinault and approximately 20 miles of tidelands along the Pacific Ocean. It was originally heavily forested throughout.

8. The Quinault Tribe remained the sole owner and occupant of the Reservation until about 1905. At that time, pursuant to the Treaty of Olympia, the Executive Order of 1873, and the General Allotment Act of 1887, 24 Stat. 388, 25 U.S.C. §331 et seq., defendant began to allot the Reservation first to residents of the Reservation, and then, pursuant to the Act of March 4, 1911, 36 Stat. 1345, to members of other

tribes residing elsewhere. By 1933, the Reservation was completely allotted. There were 2340 allotments, usually 80 acres in size, nearly all of which were covered with valuable timber.

9. Each allottee received a deed, signed in the name of the President of the United States, containing language pursuant to Section 5 of the General Allotment Act, stating that the United States would hold the allotment in trust for a period of 25 years, for the benefit of the allottee or his heirs. The trust period of 25 years was extended for finite periods from time to time, and was finally extended indefinitely by Section 2 of the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. §462.

10. Pursuant to the Treaty of Olympia, the Executive Order of 1873, the General Allotment Act of 1887, the Act of March 4, 1911, the Indian Reorganization Act, and other acts and regulations, the defendant has a fiduciary duty to the allottees to manage their resources, including their land and timber, prudently until the trust period ends.

11. The Quinault Tribe owns a few small parcels of land, totalling about 4,000 acres. All of the land and appurtenant resources of the Tribe are held in trust by the defendant for the benefit of the Tribe and, as long as the trust continues, the defendant has a fiduciary duty to manage such resources prudently.

12. According to the present Bylaws, the membership of the Quinault Tribe consists of "blood members" (persons of at least one-quarter Quinault or Queets blood) and "affiliated" members (persons of at least one-quarter Quileute, Hoh, Chehalis, Chinook, or Cowlitz blood who own (or whose father or mother owns) a trust interest in an allotment on the Reservation, and who reside on the Reservation, in Grays Harbor County, or within 10 miles of the Reservation in Jefferson County). Many allottees are members of the Tribe, while many others are not.

13. The allottees as a group were unorganized until the formation of the Quinault Allottees Association in 1968. The Quinault Tribe has always been organized, but it could not, and did not, represent the allottees as such.

14. Logging operations on the Quinault Reservation began in approximately 1917. A cruise was made of all timber on the Reservation between 1915 and 1917. Most of the timber which has been logged to date has been logged under long-term cutting contracts which are let and administered by the defendant as trustee for the plaintiffs. The defendant has to date entered 14 such contracts on behalf of the allottees. Defendant did not recruise the areas to be logged before entering any of the long-term contracts.

15. Under the Indian Reorganization Act of 1934, defendant is required to manage the plaintiffs' forest resource on a sustained yield basis. 25 U.S.C. §466. The plaintiffs rely upon defendant to manage their resources properly as trustee for them.

16. The area on the Reservation South of the Quinault River was logged almost entirely under the following long-term, large unit contracts:

Contract	Contract Period	Logger
Moclips Unit	1920-1930	Aloha Lumber Co.
Cook Creek Unit	1922-1933	Frank D. & Edwin A, Hobi
Point Grenville Unit	1922-1940	M.R. Smith Lumber & Shingle Co.
Lake Quinaielt Unit (north and south of Quinault River)	1923-1957	Ozette Railway Co.
Mounts Unit	1923-1949	Aloha Lumber Co.
Upper Wreck Creek Unit	1927-1937	Aloha Lumber Co.
Hatch Unit	1927-1937	Aloha Lumber Co.
Hall Unit	1928-1948	Aloha Lumber Co.
River Bend Unit	1942-1944	Aloha Lumber Co.
N. P. Trail Unit	1943-1947	Aloha Lumber Co.
Boulder Creek Unit	1950-1958	Wagar Lumber Co.

Logging operations under these contracts were conducted under the supervision of defendant.

17. Prior to 1950, the area of the Reservation north of the Quinault River was unlogged, except for part of the Lake Quinault Unit, mentioned above, and the Milwaukee Trial Unit, which was logged from 1937 through 1954 by Frank Morgan, Quinault Logging Co., and Martinson, under the supervision of defendant.

18. In 1950 and 1952, two long-term logging contracts were entered into, covering approximately 75,000 acres north of

the Quinault River. These contracts are still in progress. The first is with the Aloha Lumber Company (now a division of Evans Products Corporation) and encompasses an area known as the Taholah Unit. The unit was advertised for bids on March 22, 1949, and the contract was entered on May 12, 1950. It runs for 29 years, terminating in 1979. The other contract is with Rayonier, Inc. (now ITT Rayonier, Inc.) and covers an area known as the Crane Creek Unit. The unit was advertised for bids on March 12, 1952 and the contract was entered on June 30, 1952. It runs for 34 years, terminating in 1986. Logging operations under these contracts are conducted under the supervision of defendant.

19. Since February 14, 1920, whenever a sale of timber from trust allotments on tribal trust land on the Quinault Reservation has taken place, the defendant has collected an administrative charge from the proceeds of the sale. This charge has varied in amount over the years. The current charge is six percent, except where an Indian arranges for the sale of his own timber, in which case the charge is less.

20. The timber on the northwestern corner of the Reservation, known as the Queets Unit and containing approximately 45,000 acres, was offered for sale along with the timber on the Taholah and Crane Creek Units, but was not sold. The timber on the Queets Unit was never reoffered for sale on

a unit-wide basis and currently the great majority of the land in this unit has been taken out of trust and is in fee patent status.

Respectfully submitted,

Charles A. Hobbs

Charles A. Hobbs
Attorney for Plaintiffs

April 15, 1974

Filed 12-30-71

IN THE UNITED STATES COURT OF CLAIMS

HELEN MITCHELL, an allottee of the Quinault Reservation, and 530 other allottees listed on Attachment A hereto; the QUINAULT ALLOTTEES ASSOCIATION; and the QUINAULT TRIBE; on their own behalves and on behalf of ALL ALLOTTEES of the Quinault Reservation or their successors,	)	
Plaintiffs,	)	
v.	)	No. 772-71
THE UNITED STATES OF AMERICA,	)	
Defendant.	)	

PLAINTIFFS' MORE DEFINITE STATEMENT

Plaintiffs, pursuant to the order of Commissioner Wood entered on November 30, 1971, hereby submit the following by way of amplification and more definite statement of the complaint. Further detail than submitted herewith is not possible at this stage, but can be made available at later stages through the ordinary procedures of discovery and pre-trial conferences.

1. Plaintiffs do not have the necessary information further to identify the contracts referred to in Paragraph 15 of the petition (by which contracts the southern half of the Quinault Reservation was logged between February 14, 1920, and about 1950). We intend to include all such logging

contracts, and defendant has the records which identify them.

2. The logging contract referred to in Paragraph 17 of the petition is Bureau of Indian Affairs contract number I-101-Ind-1766. The logging contract referred to in Paragraph 18 is Bureau of Indian Affairs contract number I-101-Ind-1902.

3. We allege that all the various logging contracts from February 14, 1920, to the present failed adequately to protect the interests of the allottees and the Tribe in numerous respects, some examples of which are detailed below. In entering into such contracts on behalf of the allottees and the Tribe, and in administering such contracts, we allege that the defendant breached its fiduciary obligation to the plaintiffs in numerous respects. As to the contracts other than those for the Taholah and Crane Creek Units, we do not yet know the terms of them, and thus cannot yet detail the alleged breaches. As to the Taholah and Crane Creek contracts, the alleged breaches are detailed as follows (and further breaches may be revealed as the evidence becomes available):

a. The contracts provided for an inherently inadequate formula for determining fair stumpage prices which plaintiffs would receive for their timber.

b. Defendant improperly applied the contract formula for determining stumpage prices by, among other things, using inadequate and erroneous data in the formula, and allowing over-generous logging costs, including periodic allowances of interest on the advance payments which the logging contractors paid to plaintiffs.

c. Defendant imprudently invited bids for large, long-term logging contracts, especially three such contracts in the Taholah, Queets and Crane Creek Units within a short interval of time, and on which contracts only a very few large companies could bid. The bids, therefore, were grossly limited in number, and the bid prices were much lower than would have been the case had smaller units been offered for bid.

d. The logging contractors were not required to cut timber of inferior quality along with good quality timber, thus increasing the possibility that this lower quality timber will not be cut by the end of the contract period.

e. Defendant did not have nor obtain adequate information and data relating to the volume and quality of timber on plaintiffs' properties, which lack of information and data creates various inequities and inaccuracies in the calculation of advance payments, stumpage prices and fixed costs.

f. Defendant permitted improper scaling methods of plaintiffs' timber, especially the use of water scaling, which causes a loss in measured volume of timber.

g. The logging contractors were permitted by defendant to change the contract-required 32-foot logs to 40-foot logs, with a consequent reduction of value received by plaintiffs for their stumpage.

h. Defendant permitted the logging contractors to engage in wasteful, damaging and potentially damaging logging practices, such as leaving merchantable logs on the grounds; failing to salvage other usable material at adequate prices, or at all; by not clearing away slash, thereby causing and increasing the risk of fire in valuable timber stands; and the clogging, silting and heating of rivers and streams, with consequent damage to the fisheries and game resources of the Reservation.

i. Defendant has provided roads, bridges and culverts which are inadequate in quantity or quality to serve logging needs. Further, defendant failed to reserve easements when these roads were constructed, thus making it possible at the end of the contract for the allottees whose land was crossed to interfere with subsequent logging.

j. Defendant did not properly mark the boundaries of allotments, thereby creating the need for expensive remarking costs, and in some cases the erroneous payment to certain allottees for others' timber.

The above list of claims is not exhaustive, but reflects only those claims that are apparent from the information plaintiffs now have. Further discovery and intensive expert investigation is expected to reveal more wrongs to plaintiffs arising from these contracts and their administration. As a result of these detailed and presently unknown wrongs, the allottees and the Tribe failed to receive fair market value for their timber, were unnecessarily delayed and restricted in realizing proceeds from their timber, suffered loss of property without just compensation, and suffered other damages in connection with the contracts.

Respectfully submitted,

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Of Counsel

December 30, 1971

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487. Van Mechelen, Helen Brown
488. Vandervest, Isabelle Hudson
489. Walkowsky, Alvin
490. Walkowsky, Ethel E. Pope
491. Wallerstedt, Bertha Woodruff
492. Ward, Arvie
493. Ward, Margaret
494. Ward, Marion L.
495. Wells, Catherine Gill
496. Whetung, Georgianna Cross
497. Whitaker, Alberta Chenois
498. White, Jessie Provoe
499. Whitish, Rachel Brignone
500. Williams, Charles, R.
501. Williams. Donald E.
502. Williams, Dorris Reed
503. Williams, Iola Penn
504. Williams, Mary Fisher
505. Williams, Priscilla E. Payne
506. Wilson, Robert L.
507. Winkler, Bernice Elsie Hoveland
508. Wolfs, Dolly M. Farrell
509. Woodruff, Fred
510. Woodruff, Russell
511. Woodruff, Sarah Ida Ward.
512. Wright, Sophie Reinertsen
513. Yandell, Pamela Rae
514. Yerkes, Arthur A.
515. Yerkes, Caesar James
516. Youckton, Percy
517. Young, Leonard
518. Young, Lillian Sanders
519. Zollner, Myrtle Shaw
520. Black, Clyde
521. Hayden, John, Sr.
522. Heck, Thomas Ralph
523. Hernandez, Rosemary Pete
524. Jack,Mabel Hayden
525. Jackson, Thomas L.
526. Lagergren, Sally A.
527. Moran, Olive M. Anderson
528. Mounts, Norman U.
529. Penn, Thomas
530. Sherwood,Emily Johns
531. Strong, Anna Mae Rhoades

IN THE
UNITED STATES COURT OF CLAIMS

HELEN MITCHELL, et al., Plaintiffs, v. THE UNITED STATES OF AMERICA, Defendant.	)	Nos. 772-71, 773-71, 774-71, 775-71

PLAINTIFFS' MEMORANDUM OF CONTENTIONS OF FACT AND LAW

Pursuant to paragraph 1(c) of the Standard Pretrial Order on Liability (Rule 111), plaintiffs submit the following contentions of fact expected to be established and conclusions of law based thereon. Due to the complex nature of the above-captioned cases, plaintiffs have sought to make the contentions as concise as possible and have specified only those contentions relevant to the first trial.

I. CONTENTIONS OF FACT

1. Defendant is trustee for plaintiffs and is responsible for managing their resources prudently and making all management decisions.

2. Plaintiffs, as a group, have diminished general competence relative to the population at large in terms of education and experience.

3. Plaintiffs, as a group, do not possess the technical knowledge of timber management necessary to recognize proper or improper management of their forest resources by defendant and therefore rely completely upon the defendant to make decisions and manage their forest resources for them. This reliance was both expected and encouraged by defendant.

4. Defendant failed to provide accountings to plaintiffs in sufficient detail so as to enable the plaintiffs to determine whether the trustee was properly discharging its responsibilities.

5. When selling plaintiffs' timber, both under long-term contracts and on small unit and individual allotment sales, defendant failed to obtain the fair market value therefor for the benefit of plaintiffs.

6. In computing stumpage prices to be paid to plaintiffs under the long-term contracts, defendant included some costs which were excessive and others which were improper as a charge against stumpage.

7. Plaintiffs were not paid enough money in advance payments under the Crane Creek and Taholah contracts.

8. Defendant failed to construct a sawmill for plaintiffs to enable them to reap maximum profits from the sale of their timber and gain valuable knowledge of timber management; such a project was both feasible and appropriate for defendant to do as trustee for plaintiffs.

9. Defendant has failed to manage plaintiffs' forest resource on a sustained yield basis and has not provided adequately for reforestation or properly cared for growing timber.

10. Defendant failed to both properly educate plaintiffs with respect to forest and economic resource management and to assist them in obtaining employment where they could acquire such knowledge and skills.

11. Defendant failed to require the loggers on long-term contracts to harvest plaintiffs' timber consistent with defendant's most recent and stringent regulations.

12. Defendant mismanaged the long-term timber contracts on the Taholah and Crane Creek Units (first trial) with resultant damage to plaintiffs by failing to require the loggers to:

a. Build good quality roads, culverts, bridges, drainage facilities, etc.;

b. Pay for the taking of gravel or restore gravel pits;

c. Log in a manner so as not to damage streams and fisheries;

d. Remove all merchantable timber;

e. Dispose of all slash; and

f. Log at a relatively consistent rate throughout each year of the contract, thus allowing the loggers to manipulate their cuttings to the damage of plaintiffs.

13. Defendant failed to adequately supervise the scaling of plaintiffs' timber and allowed some of plaintiffs' timber to be scaled improperly.

14. Defendant failed to manage plaintiffs' forest resources in such a manner as to properly guard against the hazards of fire.

15. Defendant has failed to establish an easement system on the Reservation as a whole, and has failed to reserve easements when individual allotments are sold.

16. Defendant has allowed trust allotments to be traversed without the payment of tolls.

17. Defendant failed to develop a comprehensive management plan for the Reservation as a whole and the Queets Unit in particular and, since approximately 1955 and through at least 1965, has encouraged allottees to sell their land with the result that most of the Queets Unit has now been taken out of trust status.

18. Defendant failed to develop comprehensive logging plans for the Reservation allowing the contractors to initiate such plans.

19. Defendant failed to properly advise plaintiffs with respect to the management and sale of their forest resources and the proceeds thereof.

20. Defendant gave fee patents to plaintiffs who were not competent to manage their own affairs and did not know enough about timber to enable them to obtain a fair price when selling their timber. Defendant also failed to properly advise plaintiffs about the consequences of obtaining fee patents (e.g. taxation, loss of trust benefits, etc.).

21. Defendant made changes in the terms of long-term contracts without obtaining the required consent of plaintiffs.

22. Defendant encouraged plaintiffs to make supervised sales of their land and timber without adequately explaining to them the consequences of such sales (e.g. loss of trust benefits, etc.) and without adequately examining their competence to understand the nature of such sales or manage the proceeds thereof.

23. Defendant failed to adequately manage plaintiffs' money for them, instead giving large sums of money to plaintiffs who defendant knew or should have known would be likely to and did squander same.

24. Defendant charged plaintiffs an excessive bond and caused delays in logging under Special Allotment Timber Cutting Permits.

25. Plaintiffs incorporate herein by reference such facts as are included in their "Statement of Material Matters of Fact As To Which It Is Believed that There Is No Substantial Controversy," if any, as are not admitted by defendant.

26. All of the foregoing wrongs would not have been committed by a prudent trustee responsible for the management of plaintiffs' resources and they caused damage to plaintiffs.

II. CONCLUSIONS OF LAW

1. As trustee for plaintiffs, defendant has a fiduciary duty which it breached to manage their forest and economic resources for them prudently and to obtain fair market

value when selling their timber. Seminole Nation v. United States, 316 U.S. 286 (1942); Seneca Nation v. United States, 173 Ct.Cl. 917 (1965); Menominee Tribe v. United States, 117 Ct.Cl. 442 (1950); Menominee Tribe v. United States, 101 Ct.Cl. 10 (1944).

2. Defendant is required to manage plaintiffs' forest resources on a sustained yield basis and it has failed to do so. 25 U.S.C. §466.

3. Although plaintiffs' statute of limitation theories were essentially set forth in a letter to the Court, dated June 12, 1973, a copy of which was sent to counsel for defendant, they will be briefly refined and summarized herein, citing some of the authorities relied upon:

a. The statute of limitations does not begin to run on plaintiffs' claims against the defendant trustee for mismanagement of trust property until the trust terminates as to the property. United States v. Taylor, 104 U.S. 216 (18 Russell v. United States, 37 Ct.Cl. 113 (1902); Wayne v. United States, 26 Ct.Cl. 274 (1891); Manchester Band of Pomo Indians v. United States, 363 F.Supp. 1238 (N.D.Cal. 1973).

b. The statute of limitations does not begin to run against incompetent plaintiffs during the period of their incompetency. 28 U.S.C. §2501; Dodge v. United States, 176 Ct.Cl. 476 (1966); Chisolm v. House, 183 F.2d 698 (10th Cir. 1950); Daney v. United States, 247 F.Supp. 533 (D.Kan. 1965), aff'd, 370 F.2d 791 (10th Cir. 1966); Nash v. Wiseman, 227 F.Supp. 552 (N.D.Okla. 1963).

c. The statute of limitations has never begun to run against plaintiffs since they never had any reasonable means of discovering the facts constituting the cause of action and they did not learn nor should they be charged with having learned of such facts. 51 Am. Jur.2d. Limitation of Actions §§138-152 (1970); Urie v. Thompson, 337 U.S. 163 (1949); Spevack v.

United States, 182 Ct.Cl. 884 (1968); JAPWANCAP, Inc. v. United States, 178 Ct. Cl. 630, cert. denied, 389 U.S. 971 (1967).

d. The statute of limitations does not run against plaintiffs since defendant itself is not subject to the said statute. Normally, if a third party wronged the trust property, the trustee would be under a duty to bring suit against the third party. If plaintiffs' trust property had been wronged by a third party, the Government would have sued, and because it is the sovereign would have been exempt from the statute of limitations. This same exemption should be extended to the cestui who sues the Government qua trustee, because the Government, being the wrongdoer itself, cannot or will not sue itself. Bogert, The Law of Trusts & Estates §§543(s), 869, 954, 955 (2d ed. 1962).

e. With respect to the Taholah and Crane Creek Units, the statute of limitations does not begin to run for the continuing wrongs committed during the course of these open contracts until the termination of such contracts. Ortiz v. LaVallee, 442 F.2d 912 (2d Cir. 1971).

Respectfully submitted,

Charles A. Hobbs

Charles A. Hobbs
Attorney for Plaintiffs

April 15, 1974

MITCHELL v. UNITED STATES

Docket Nos. 772-71---775-71

Court of Claims

OBJECTIONS TO MOTION FOR ORDER DIRECTING DEFENDANT TO RESPOND TO REQUEST FOR ADMISSION

AND

MEMORANDUM IN SUPPORT OF OBJECTIONS TO MOTION FOR ORDER DIRECTING DEFENDANT TO RESPOND TO REQUEST FOR ADMISSION.

IN THE UNITED STATES COURT OF CLAIMS

HELEN MITCHELL, et al., Plaintiffs, v. THE UNITED STATES OF AMERICA, Defendant.	)	Docket Nos. 772-71 through 775-71

OBJECTIONS TO MOTION FOR ORDER DIRECTING DEFENDANT TO RESPOND TO REQUEST FOR ADMISSION

Comes now the defendant, the United States of America, and objects, pursuant to Court of Claims Rule 72 (b), to plaintiffs' Motion For Order Directing Defendant To Respond To Request For Admission on the following grounds:

1. Plaintiffs' requests for admissions at this stage are improper in that this Court is without jurisdiction as to any claims before October 18, 1965.

2. Plaintiffs' requests are also improper in that this Court lacks jurisdiction under 28 U.S.C. Sec. 1491 and 28 U.S.C. Sec. 1505 of plaintiffs' reforestation claims, as well as many other claims of improper management, whether before or after October 18, 1965.

3. Plaintiffs' requests are improper in that they are premature. This Court is under a duty to proceed no further herein until the issue of jurisdiction has been formally and ultimately decided.

4. As the Court lacks jurisdiction of plaintiffs' claims, the requirement of a response to plaintiffs' requests

for admissions would result in annoyance and undue burden and expense.

Dated this day of May 1977.

Respectfully submitted,

PETER R. TAFT
Assistant Attorney General

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Attorney
Attorneys for Defendant

By_____
Attorney

I N D E X

IN THE UNITED STATES COURT OF CLAIMS

HELEN MITCHELL, et al., Plaintiffs, v. THE UNITED STATES OF AMERICA, Defendant.	)	Docket Nos. 772-71 through 775-71

MEMORANDUM IN SUPPORT OF OBJECTIONS TO MOTION FOR ORDER DIRECTING DEFENDANT TO RESPOND TO REQUEST FOR ADMISSION.

PRELIMINARY STATEMENT

The subject matter of the April 11, 1977 pretrial conference before Trial Judge John P. Wiese was the issue of jurisdiction as presented in lists of cases furnished to the Court by the plaintiffs and the defendant. The Trial Judge expressed his tentative oral opinion that plaintiffs' claims before October 18, 1965 were barred by the jurisdictional six-year statute of limitations of the Court of Claims, 28 U.S.C. Sec. 2501. At that conference plaintiffs presented their motion for order directing defendant to respond to request for admission dated April 11, 1977. When it was pointed out that their motion was premature, they withdrew it. Defendant was astonished, however, to receive a copy on April 15, 1977 indicating that plaintiffs, just three days after April 11, had resubmitted their motion, only the date being changed to April 14, 1977.

Defendant in its answers in each of the four dockets herein raised the issue of jurisdiction in its third and fourth defenses. Defendant on May 6, 1975 filed its Motion to Define Jurisdiction. Trial was held from January 20 through February 3, 1977 in Seattle, Washington on the issue of jurisdiction. Numerous witnesses testified and many exhibits were admitted in evidence at that trial. The plaintiffs thus had ample opportunity to develop and present any facts having any relevancy to the issue of jurisdiction.

Plaintiffs' request for admission is apparently directed to their reforestation claim as set out in their Docket Number 774-71 petition, page 11, paragraph 20, as follows:

> The defendant's management of the plaintiff's land, to the extent it failed to arrange for proper rehabilitation and reforestation of cutover land, and for proper care of growing timber, was in breach of its fiduciary duty to the allottees and the Tribe. As a result, the volume of timber owned by the allottees and the Tribe failed to increase from year to year at the rate it should; they suffered loss of property without just compensation, and were otherwise damaged.

Plaintiffs at the April 11, 1977 pretrial conference presented an outline summarizing some of their claims. A copy is attached as Exhibit A. That outline characterizes the basis for the defendant's liability in respect to reforestation as "negligent failure to plant trees."[1/]

1/ Plaintiffs on Exhibit A also summarized as "negligent failure" their pickup scale claims, their road mileage error claim, and their supervised sales claims. Hence, these claims, along with the reforestation claim of Docket No. 774-71, sound in tort and are, therefore, outside the jurisdiction of this Court.

ARGUMENT

I. Introduction

A. Sec. 1505 jurisdiction pertains to tribal claims.

The Court of Claims has jurisdiction under 28 U.S.C. Sec. 1505 as to claims accruing after August 13, 1946 by an Indian tribe, band, or group when the alledged claim:

> "is one arising under the Constitution, laws or treaties of the United States, or Executive orders of the President, or is one which otherwise would be cognizable in the Court of Claims if the claimant were not an Indian tribe, band or group."

Of the approximately 192,000 acres involved in this litigation apparently only about four to six thousand acres are owned by the plaintiff Quinault Tribe. Hence, only that minor portion, if any, of plaintiffs' reforestation claim could possibly come within the scope of Sec. 1505. Plaintiffs have not specifically revealed whether the tribe is asserting a reforestation claim as to its tribal land. If it were, however, there is nothing to indicate that such a claim is one arising under the Constitution, laws or treaties of the United States, or executive orders of the President.

If such a claim were otherwise cognizable it would be subject to the jurisdiction Congress confered upon the Court of Claims by 28 U.S.C. Sec. 1491. It is under the latter section that the 1374 individual allottee plaintiffs herein filed their claims. 1/

1/ As of February 23, 1976 the number of allottee plaintiffs was 1374.

B. Sec. 1491 jurisdiction pertains to claims by individuals.

The jurisdiction of this Court as defined by Congress in 28 U.S.C. Sec. 1491 is:

> "to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort."

Nothing adduced thus far in this litigation shows that plaintiffs' reforestation claims, whether before or after October 18, 1965, properly come within the jurisdiction of the Court of Claims as conferred by Congress under Sec. 1491.

II. All of plaintiffs' claims before October 18, 1965 are barred by the jurisdictional six-year statute of limitations, 28 U.S.C. Sec. 2501.

The six-year statute of limitations, 28 U.S.C. Sec. 2501, is a jurisdictional bar which deprives the Court of jurisdiction over claims that did not accrue within six years before (a) the filing of the petitions in Docket Nos. 772-71, 773-71, and 774-71 on October 18, 1971; or (b) the filing of the amended petition in Docket No. 775-71 on October 2, 1972; or (c) the dates of the orders of this Court permitting those individual allottees to be added as plaintiffs who were not plaintiffs when the petitions were filed.

As 28 U.S.C. Secs. 1491 and 1505, under which these four suits were filed, are in derogation of the sovereign

immunity of the United States, they must be strictly construed. The Congressional consent permitting the United States to be sued as defendant in the Court of Claims has the condition precedent that the claim accrue within six years before filing of suit. 28 U.S.C. Sec. 2501. Exceptions are not to be implied.

Kendall v. United States, 107 U.S. 123 (1882).

Finn v. United States, 123 U.S. 227, 229, 232-233 (1887).

Johnson v. United States, 160 U.S. 546, 549 (1896).

Price v. United States and Osage Indians, 174 U.S. 373, 375 (1899).

Blackfeather v. United States, 190 U.S. 368, 376 (1903).

Thurston v. United States, 230, 232 U.S. 469, 476 (1914).

Camacho v. United States, 204 Ct.Cl. 248, 257-258, 259, 494 F.2d 1363, 1368 (1974).

Mann v. United States, 399 F.2d 672 (C.A. 9, 1968).

Soriano v. United States, 352 U.S. 270, 276 (1952).

United States v. Testan, et al. 424 U.S. 392, 397, 399 (1976).

United States v. King, 395 U.S. 1, 4 (1969).

Simon v. United States, 244 F.2d 703 (C.A. 5, 1957).

Stanton v. United States, 434 F.2d 1273, 1275 (C.A. 5, 1970).

Hall v. E.I. DuPont De Nemours and Company, 312 F.Supp. 358 (E.D.N.Y. 1970).

Szyka v. United States Secretary of Defense, 525 F.2d 62 (C.A. 2, 1975).

Pringle v. United States, 419 F.Supp. 289, 291 (D.S.C. 1976).

Roberts v. United States, 498 F.2d 520, 526 (C.A. 9, 1974).

Carr v. Veterans Administration, 522 F.2d 1355, 1357 (C.A. 5, 1975).

Miller v. United States, 418 F.Supp. 373, 375, 376 (D.Minn. 1976).

Eastman v. United States, 118 F.2d 421, 423 (C.A. 9, 1941), cert. den. 314 U.S. 635.

Ashley v. United States, 413 F.2d 490, 492 (C.A. 9, 1969).

Childers v. United States, 442 F.2d 1299, 1303 (C.A. 5, 1971).

Kirby v. United States, 201 Ct.Cl. 527, 539 (1973) cert. den. 417 U.S. 919.

Lunsford v. United States, 418 F.Supp. 1045, 1048, 1049, 1050 (D.S.D. 1976).

Horton Capoeman v. United States, 194 Ct.Cl. 664, 671, 440 F.2d 1002 (1971).

Caldwell v. United States, 197 Ct.Cl. 1063 (1972).

Jessie Short, et al. v. United States, 209 Ct.Cl. 777 (1976); earlier phases are reported in 202 Ct.Cl. 873, 486 F.2d 561 (1973), and 207 Ct.Cl. 964 (1975).

Fort Mojave Tribe of Indians v. United States, 210 Ct.Cl. (1976); Dkt. No. 267-75, order entered June 25, 1976.

Federal Indian Law (GPO, 1958), pp. 344-345.

51 Am Jur 2d, Limitation of Actions, Secs. 397 and 398.

III. Plaintiffs' reforestation claims may not be made retroactive so as to circumvent the six-year jurisdictional bar.

Plaintiffs in their request seek admissions as to dates and sites of fires stretching back to 1915. Apparently only one post-1965 fire is covered by their request. They justify their request by their alleged need to facilitate their computation of the dates when new growth should have begun and the ensuing volumes of timber that should thereafter have come into existence.

The effect of plaintiffs' request for data before October 18, 1965 is to imply that land lacking in what plaintiffs regard as adequate reforestation on October 18, 1965, which had been the site of a fire before that date, is the proper subject of a reforestation claim. To lend credence to such a claim would be tantamount to projecting retroactively a continuing claim as a device to circumvent the six-year jurisdictional bar.

Jurisdiction may not be acquired retroactively by distorting some theory of continuing claim[1/] so as to nullify the six-year statute of limitations. Such an exception cannot be implied. The six-year jurisdictional statute must be narrowly construed. Retroactivity cannot be exploited to broaden it. To so apply retroactivity would entail the use of equitable jurisdiction which Congress did not see fit to confer upon the Court of Claims. United States v. King, 395 U.S. 1, 2-3 (1969), United States v. Testan, 424 U.S. 392, 398, 403-404 (1976), and Haneke v. The Secretary of the Department of Health, Education and Welfare, 535 F.2d 1291, 1294-1295 (C.A.D.C. 1976). Absent a statutory bar, continuing claims under some circumstances may be projected prospectively to a limited extent, but never retroactively. Calhoun v. United States, 173 Ct.Cl. 893, 354 F.2d 337 (1965).

1/ Each event removing timber from a given parcel of land, whether by fire or otherwise, is a circumstance of the past, complete, done, and over with.

IV. Plaintiffs' requests for admissions at this stage are improper in that this Court has no jurisdiction as to any of the reforestation claims by any of the plaintiffs whether before or after October 18, 1965.

A. Congress by Section 1491 did not grant jurisdiction to the Court of Claims to try any of plaintiffs' claims that sound in tort.

1. Plaintiffs in the attached Exhibit A conceded that their claims for reforestation, pickup scale, road mileage error, and supervised sales sound in tort.

2. Plaintiffs in both their March 21, 1977 list of cases on the statute of limitations issues and in their April 29, 1977 supplemental memorandum rely in part on fraud as creating an exception to the six-year jurisdictional bar. Such attempts by plaintiffs to avoid the six-year bar cause their claims to sound in tort. This Court's limited tort jurisdiction does not embrace plaintiffs' claims. Myers v. United States, 206 Ct.Cl. 863 (1975).

3. Presumably the type of fraud that plaintiffs seemingly envisage is basically misrepresentation by defendant's employees. Plaintiffs alleged no misrepresentations and proved none at the January 20 - February 3, 1977 Seattle trial herein. The Court of Claims has no jurisdiction as to claims arising out of misrepresentation, whether negligent or willful. Even though a misrepresentation may be merely incidental to the substance of the complaint, the Court has no jurisdiction. United States v. Neustadt, 366 U.S. 696, 704, 711 (1961), Somali Development Bank v. United States,

205 Ct.Cl. 741, 749-750, 508 F.2d 817 (1974), McCreery v. United States, 161 Ct.Cl. 484, 487-489 (1963), Soukaras v. United States, 135 Ct.Cl. 88, 92-93, 140 F.Supp. 797 (1956), cert. den. 352 U.S. 918, O'Donnell v. United States, 166 Ct.Cl. 107, 109 (1964), Jones v. United States, 207 F.2d 563 (C.A. 2, 1953), cert. den. 347 U.S. 921, Rey v. United States, 484 F.2d 45, 48-50 (C.A. 5, 1973), Fitch v. United States, 513 F.2d 1013, 1015-1016 (C.A. 6, 1975), cert. den. 423 U.S. 866, and Hall v. United States, 274 F.2d 69 (C.A. 10, 1959).

B. The relationship between plaintiffs and the defendant does not impose a duty on the defendant to pay to plaintiffs monetary damages for any alleged lack of reforestation in the absence of an express provision of a treaty, agreement, or statute creating such a duty.

1. Introduction

With the possible exception of plaintiffs' claim that the defendant collected under 25 U.S.C. Sec. 413 and 25 C.F.R. 141.18 administrative fees in excess of administrative costs (Docket Number 775-71, first amended petition, page 14, paragraph 24),[1/] plaintiffs' claims do not meet the test of Section 1491 jurisdiction as laid down by this Court in Eastport Steamship Corporation v. United States, 178 Ct.Cl.

1/ The defendant is not waiving its position that under Klamath and Modoc Tribes v. United States, 174 Ct.Cl. 483, 487-491 (1966), defendant's liability, if any, must first be established before plaintiffs' administrative fee claims and other accounting claims in plaintiffs' first amended petition in Dkt. No. 775-71 become viable.

599, 607, 372 F.2d 1002, 1008-1009 (1967). Under Export Steamship Corporation the Court of Claims jurisdiction in non-contractual suits under Section 1491 is confined to money claims in two categories. One are those in which plaintiffs seek return of money paid over to the Government, i.e. plaintiffs' excess administrative fee claim. Second, those in which a statute, expressly or impliedly, creates a right to recover a sum of money. Mosca v. United States, 189 Ct.Cl. 283, 290, 417 F.2d 1382 (1969), cert. den. 399 U.S. 911, Austin v. United States, 206 Ct.Cl. 719, 723 (1975), cert. den. 423 U.S. 911. Section 1491 per se creates no substantive right for money damages. It merely confers jurisdiction whenever the substantive right exists. United States v. Testan, 424 U.S. 392, 397-398, 400, 402 (1976). Neither the Constitution nor legislation mandates payment by the defendant to the plaintiffs for allegedly inadequate reforestation.

2. There is no fiduciary relationship between plaintiffs and the defendant whereby plaintiffs' claims come within the Court's jurisdiction under Section 1491.

The relationship between the plaintiffs as Indians and the defendant as the Government is not that arising from an express trust. No treaty, contract, or statute has created an express trust herein. Treaties and statutes setting up or enlarging reservations, and statutes whereby reservations are allotted, do not impose a trust responsibility on the defendant that mandates payment by the defendant to plaintiffs for alleged improper management of plaintiffs' allotments. Donahue

v. Butz, 363 F.Supp. 1316, 1319-1321, 1323-1324 (N.D. CAL., 1973).

The Court of Claims has long recognized that the relationship between Indians and the Government does not of itself create liability. Moreover, omission to act, or what plaintiffs term "negligent failure" in Exhibit A, is not compensable. Choctaw and Chickasaw Nations v. United States, 75 Ct.Cl. 494, 497-499 (1932).

Because plaintiffs' claims might be hypothetically tenable under special jurisdictional acts, or as Congressional reference cases, or under the Indian Claims Commission Act, does not qualify them to fall within the jurisdiction of Section 1491. The Indian Claims Commission under the unique waiver of sovereign immunity granted by Congress in the Indian Claims Commission Act has assumed jurisdiction of some cases of alleged mismanagement of tribal timber resources on Indian reservations. Such cases were all instituted by tribal plaintiffs. The foregoing does not signify that Section 1491 provides similar broad jurisdiction for cases such as the four herein filed by hundreds of individual Indian plaintiffs. Likewise, cases of that type in Congressional reference situations or under special acts by which Congress vested jurisdiction in the Court of Claims to determine mismanagement claims are not viable precedents for declaring that Section 1491 also permits the Court of Claims to exercise general jurisdiction over such claims by individual allottees.

Then too the bulk of decisions dealing with the relationship between Indians and the Government concern tribal trust funds derived from a treaty, agreement, or executive order, or statute. Accounting for tribal funds is an entirely different situation than the instant litigation. The majority of plaintiffs' claims allege some phase of supposedly improper mismanagement of the timber on hundreds of individually owned allotments.

Even in accounting cases, establishment of liability of the Government usually turns on whether the Government indirectly enriched itself. For example, the Government may have used a part of a tribal fund for a purpose unauthorized by a specific provision in a particular treaty, agreement, executive order, or statute rather than use Government monies. Confederated Salish and Kootenai Tribe v. United States, 175 Ct.Cl. 451, 453 (1966), cert. den. 385 U.S. 921.

In the instant cases there is no allegation that the Government enriched itself by improper diversion of tribal income. Also, no evidence indicative of any such enrichment was adduced at the Seattle Trial herein.

Moreover, the part of the legislative history of 28 U.S.C. Sec. 1505 comparing that section with Section 1491 reveals that both Section 1505 and Section 1491 were to be confined to granting to the Court of Claims jurisdiction primarily to adjudicate misappropriation of Indian funds or property by the Government. Klamath and Modoc Tribes v. United States,

174 Ct.Cl. 483, 489 (1966). Neither the petitions herein nor the Seattle trial indicate any misappropriation by the Government of any of plaintiffs' funds or property.

In any event, the obligations of a technical trustee are not those of the Government. Fort Peck Indians v. United States, 231 Ct.Cl. 373, 374, 132 F.Supp. 222, 223 (1955).[1/] Likewise, the Government is not burdened with the obligations of a guardian merely by reason of the relationship per se between the Government and Indians. Skokomish Indian Tribe v. France, 269 F.2d 555, 560 (C.A. 9, 1959).

In the absence of a treaty, agreement, executive order, or statute expressly obligating the United States as a fiduciary, there is nothing which mandates compensation by the defendant to the plaintiffs in respect to plaintiffs' reforestation claims or other claims of improper management. United States v. Testan, 424 U.S. 392, 400 (1976), Gila River Pima Maricopa Indian Community v. United States, 135 Ct.Cl. 180, 187-189, 140 F.Supp. 776, 780-781 (1956), Gila River Pima Maricopa Indian Community v. United States, 190 Ct.Cl. 790, 797-798, 427 F.2d 1194 (1970).

3. Section 1505 jurisdiction has virtually the same restrictions as Section 1491 jurisdiction.

The fact that as to a small portion of the lands involved in the four suits herein one of the plaintiffs is the Quinault Tribe under 28 U.S.C. Section 1505 does not modify defendant's foregoing contentions. Section 1505 as to a

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1/ See also Hermann v. United States, 113 Ct.Cl. 54, 59-60, 81 F.Supp. 830 (1949).

tribal plaintiff does not grant to the Court of Claims jurisdiction correlative with that of the Indian Claims Commission. On the contrary, Section 1505 jurisdiction shares the identical restrictions of Section 1491 jurisdiction. Section 1505 jurisdiction is not Indian Claims Commission jurisdiction. It is Section 1491 jurisdiction. The only real difference is that Section 1505 permits suits by a tribal plaintiff, whereas Section 1491 confers jurisdiction as to suits by individuals, including individual Indian plaintiffs. Indian plaintiffs are subject to the same restrictions as are ordinary non-Indian individuals suing in the Court of Claims. Likewise, a tribal plaintiff is subject to the same restrictions as are individual plaintiffs. Klamath and Modoc Tribes v. United States, 174 Ct.Cl. 483, 486-491 (1966).

4. There is no treaty, agreement, executive order, or statute requiring defendant to pay monetary damages to plaintiffs for any alleged inadequate reforestation or other alleged improper management of the timber on the Quinault Indian Reservation.

a. Plaintiffs have not cited any treaty between the plaintiffs and the defendant requiring the defendant to pay monetary damages to plaintiffs for any alleged improper management.

b. There is no statutory duty requiring the defendant to pay monetary damages to plaintiffs for any alleged improper management of the timber on the reservation.

Plaintiffs in their reforestation claim petition refer to statutes under which allegedly defendant "has a fiduciary duty * * * to manage [plaintiffs'] lands

and timber prudently". Docket 775-71 petition, page 7, paragraphs 10 and 11. The two statutes with any relevancy at all are statutes expressing general policy. Neither 25 U.S.C. Section 413 nor 25 U.S.C. Section 466 specifically refers to plaintiffs' timber on the Quinault Indian Reservation. Neither statute expressly mandates payment of compensation by the defendant to the plaintiffs in the event the Government should fail to implement properly the statutory policy.

Section 413 simply authorizes the Secretary of the Interior "in his discresion, and under such rules and regulations as he may prescribe, to collect reasonable fees to cover the cost of any and all work performed for Indian tribes or for individual Indians * * *." Nothing in Section 413 required the defendant to use public funds for reforestation on the individually owned allotments on the reservation. Nothing therein mandates the payment by defendant to the plaintiffs for alleged inadequate reforestation or other alleged improper management of timber.

Moreover, plaintiffs never brought themselves within the purview of 25 U.S.C. Section 466, which directed the Secretary of the Interior "to make rules and regulations for the operation and management of Indian forestry units on the principle of sustained yield management." This section is part of the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. 461 ff. Under Sections 476, 477, and 478 the

plaintiffs could have organized a so-called Wheeler-Howard Corporation under the June 18, 1934 Act. Plaintiffs voted down that opportunity. By virtue of Section 478b their rejection also excluded them from the application of the policy declared in Section 466. If Section 466 did create an obligation fiduciary in nature for the defendant to compensate the plaintiffs for alleged mismanagement, the plaintiffs' choice precludes this Court from taking jurisdiction to enforce such an obligation for the benefit of the plaintiffs herein.

Such exclusion is consistent with prior actions of plaintiffs in respect to the principle of sustained yield management. Through litigation carried to the Supreme Court, plaintiffs compelled the Bureau of Indian Affairs to divide the Quinault Indian Reservation into approximately 2,400 allotments of 80 acres each. United States v. Payne, 284 F.2d 827 (C.A. 9, 1922), aff'd 264 U.S. 446 (1924). Def. Ex. A-25. Such fragmenting of the reservation forest intensified and multiplied the problems of the Bureau of Indian Affairs in trying to carry out a policy of sustained yield. In United States v. Halbert and Eleven Other Cases, 38 F.2d 795 (C.A. 9, 1930), rev'd by Halbert v. United States, 283 U.S. 753 (1931), Def. Ex. A-22, off-reservation plaintiffs continued the allotment process in their favor.

Plaintiffs again in Eastman, et al. v. United States, 28 F.Supp. 807 (W.D. Wash. 1939), rev'd 118 F.2d 421

(C.A. 9, 1941), made a strenuous and ultimately unsuccessful effort to force the Bureau of Indian Affairs by judicial fiat to replace selective cutting with clear cutting.

Plaintiffs' reference in its petition to Section 24 of the Indian Claims Commission Act of August 13, 1946, 36 Stat. 1049, 1055-1056, 25 U.S.C. 70, has no pertinency. Section 24 became 28 U.S.C. Section 1505. As shown, supra the Court of Claims jurisdiction under Section 1505 is simply an extension of Section 1491 jurisdiction to a tribal plaintiff. As pointed out, supra, Section 1491, and ipso facto Section 1505, create no substantive right. The two sections simply provide limited jurisdiction for an existing substantive right.

c. Plaintiffs' reforestation claims and other claims of improper management are not based on a breach by the defendant of a contractually created duty to manage plaintiffs' timber which mandates payment by the defendant to plaintiffs of monetary damages.

To be within the jurisdiction under Section 1491 plaintiffs' claims must rest on either an express or an implied contract between the plaintiffs and the defendant. American Aspen Corporation v. United States, 206 Ct.Cl. 840 (1975).

(1). Plaintiffs' claims are not within Section 1491 because they are not claims founded upon an express contract with the United States .

Plaintiffs allege that long term logging contracts

on plaintiffs' reservation began in 1920. They specifically refer to the two existing long term contracts. Docket Number 775-71 petition, pages 9-10, paragraphs 15, 17, and 18. The Taholah unit contract is dated April 26, 1950 and runs for about 29 years until April 1, 1979. It covers 30,321 acres of which 30,034 acres are allotted and only 287 acres are tribal land. The Crane Creek unit contract of June 18, 1952 terminates on April 1, 1986, just 2 1/2 months short of 34 years. Within that contract are 35,382 acres comprising 35,216 acres in allotments and 166 acres tribally owned. 1/

Each contract is between the Superintendent of the Western Washington Indian Agency for and in behalf of the allottees and the purchaser of the timber. The purchaser was to cut and pay for the timber at rates to be established for each quarterly period beginning January 1, April 1, July 1, and October 1. Payment was to the Bureau of Indian Affairs for the use and benefit of the allottees whose timber was cut in the quarter preceding the payment. The Bureau of Indian affairs in turn promptly disbursed the payments to each allottee or credited such to that allottee's individual Indian money account.

These long term logging contracts are not con-

1/ The grouping of many allotments under these two contracts did not disrupt the individual ownership pattern of the plaintiffs as owners of separate allotments. American Smelting and Refining Company v. United States, 191 Ct.Cl. 307, 316-321, 423 F.2d 277 (1970).

tracts of the United States within the jurisdiction of the Court of Claims. Nor did these contracts create obligations in favor of plaintiffs enforceable in the Court of Claims. Any infirmities in the contracts do not give rise to obligations to be enforced against the Government in this Court. The exercise by the Government of its plenary power over Indian affairs in arranging for and supervising the purchasers' performance of the contracts for plaintiffs' benefit does not entail the assumption of obligations which give the Court of Claims jurisdiction to require the defendant to compensate the plaintiff for alleged mismanagement. United States v. Algoma Lumber Company, 305 U.S. 415, 417-423 (1939). See also Farm Security Administration v. Herren, 165 F.2d 554, 563-565 (C.A. 8, 1948), cert. den. 333 U.S. 875, and Barclay v. United States, 166 Ct.Cl. 421, 441-442, 333 F.2d 847 (1964).

(2). Plaintiffs' claims are not within the jurisdiction of the Court under Section 1491 because they are not claims founded upon any implied contract with the United States.

(a). Contracts implied in law, also known as quasi-contracts, are outside the jurisdiction of the Court of Claims. Merritt v. United States, 267 U.S. 338, 341 (1925), and Porter v. United States, 204 Ct.Cl. 365 n.5, 496 F.2d 583 (1974), cert. den. 420 U.S. 1004.

(b). Although some contracts implied in fact are within the jurisdiction of the Court of Claims, the

facts herein do not imply a contract subjecting the United States to liability for damages for alleged improper management of plaintiffs' forests.

Typical contracts implied in fact, which reult in liability against the Government, are those in which the Government has appropriated private property for public use, or received some service under circumstances implying a promise to pay for such services, or received money under a duty to pay it back, or the claimant paid money to the Government under a mistake. United States v. North American Company, 253 U.S. 330, 335 (1920), Atwater Company v. United States, 275 U.S. 188, 191 (1927), Pitman and Sons v. United States, 161 Ct.Cl. 701, 706 (1963), Somali Development Bank v. United States, 205 Ct.Cl. 741, 750-751, 508 F.2d 817 (1974).

Contracts implied in fact depend for their validity upon a meeting of the minds or mutual assent of the parties. Such mutual agreement is as essential for an implied contract as for an express contract. There has not been any meeting of the minds of the plaintiffs on one side and the United States on the other whereby the United States became obligated to compensate the plaintiffs in monetary damages for alleged inadequate reforestation or any other phase of mismanagement.[1/] Consequently, there is no implied contract

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1/ Of course, even if there were mutual assent, it takes much more than mutual assent to create a contract between the Government and the Indians within Section 1491 jurisdiction. Chippewa Indians of Minnesota v. United States, 88 Ct.Cl. 1, 31 (1939).

in the instant cases in respect to which the Court of Claims has jurisdiction under Section 1491. Somali Development Bank v. United States, 205 Ct.Cl. 741, 751, 508 F.2d 817 (1974), Porter v. United States, 204 Ct.Cl. 355, 365-366, 496 F.2d 583 (1974), cert. den. 420 U.S. 1004, B and O R.R. Co. v. United States, 261 U.S. 592, 597-598 (1923), and Harley v. United States, 98 Ct.Cl. 229, 234 (1904).

C. Plaintiffs' claims for alleged inadequate reforestation and other alleged improper management pertain to Governmental functions which are discretionary, rather than mandatory. The Court of Claims has no jurisdiction under Section 1491 to adjudicate the discretionary aspect of the Government's plenary power over Indian affairs.

1. Management of plaintiffs' timber is an exercise of the plenary power of Congress to manage tribal affairs.

The supervision of timber contracts and other phases of timber management on the Quinault Indian Reservation constitutes a Governmental exercise of the plenary power of Congress to manage Indian affairs. Such supervision is not subject to control under the limited jurisdiction of Section 1491.

Lone Wolf v. Hitchcock, 187 U.S. 553, 565 (1903).

United States v. First National Bank, 234 U.S. 245, 260 (1914).

United States v. Rowell, 243 U.S. 464, 468-470 (1917).

Sisseton and Wahpeton Bands v. United States, 277 U.S. 424, 436-437 (1928).

United States v. McGowan, 302 U.S. 535, 538-539 (1938).

Chippewa Indians of Minnesota v. United States, 88 Ct.Cl. 1, 31-36, 45 (1939).

Choctaw Nation v. United States, 91 Ct.Cl. 320, 360, 371, 396, 400-401 (1940).

Sioux Tribe v. United States, 97 Ct.Cl. 613, 666, 682, 685 (1942), cert. den. 318 U.S. 789.

Osage Tribe v. United States, 102 Ct.Cl. 545, 554 (1944).

2. Timber management is a discretionary exercise of plenary power not within the jurisdiction of the Court of Claims under Section 1491.

The manner in which the Bureau of Indian Affairs exercises its timber management functions is largely a matter of discretion. For example, when or what type of reforestation, whether by natural regeneration or by deliberate planting, and if the latter the selection of the species to plant, are questions for the judgement of the Bureau of Indian Affairs foresters to resolve in the exercise of their discretion. The extent, if any, to which Congress sees fit to appropriate public funds for planting trees on hundreds of individually owned allotments, the private property of the plaintiffs, depends on whether Congress in its discretion deems it wise to appropriate public funds for a private purpose. The Court of Claims under Section 1491 has no jurisdiction to substitute its judgement for that of the Govern-

ment in such matters of discretion.

United States v. Eastman, 118 F.2d 421, 424-425 (C.A. 9, 1941), cert. den. 314 U.S. 635.

Creek Nation v. United States, 318 U.S. 629, 638-639 (1943).

Old King Coal Company v. United States, 88 F. Supp. 124 (1949).

United States v. Morrell, 331 F.2d 498, 500-502 (C.A. 10, 1964), cert. den. 379 U.S. 879.

Eastport Steamship Corporation v. United States, 178 Ct.Cl. 599, 609-611, 372 F.2d 1002 (1967).

D. Plaintiffs' claims for alleged inadequate reforestation, as well as probably some other claims of alleged improper management, are for the speculative loss of anticipated profits. Under Section 1491 the Court of Claims lacks jurisdiction to require the Government to pay monetary damages estimated by such an hypothetical means.

Plaintiffs in their Motion For Order Directing Defendant To Respond To Request For Admission state:

> Plaintiffs need to have an agreement with defendant as to the areas of the Quinault Indian Reservation that were burned by fires and the dates of the fires to facilitate computation of when new growth should have begun on such areas and the volumes of timber that should properly be in existence on such areas today.

The only possible use for what the plaintiffs euphemistically term a computation is to estimate a projection of anticipated timber volume and, in turn, a speculative timber value. Under Section 1491 this Court has no jurisdiction for loss of projected timber income which plaintiffs might have received if the defendant

had conducted a reforestation program deemed adequate by plaintiffs. Aviation Contractors, Inc. v. United States, 207 Ct.Cl. 973 (1975), Mosca v. United States, 189 Ct.Cl. 283, 289-291, 417 F.2d 1382 (1969), United States v. General Motors Corporation, 323 U.S. 373, 379 (1945), United States v. Morrell, 331 F.2d 498, 502 (C.A. 10, 1964), and United States v. Brinker, 413 F.2d 733, 735 (C.A. 10, 1969).

V. Plaintiffs' Requests are Premature Because the Court is Under a Duty to Proceed No Further Until the Issue of Jurisdiction has been Formally and Ultimately Decided.

The jurisdictional issue having been raised, the Court's duty is to proceed no further until the issue is conclusively determined.

Page v. Wright, 116 F.2d 449 (C.A. 7, 1940), appeal dismissed 312 U.S. 710.

Morris v. Gilmer, 129 U.S. 315, 325-327 (1889).

Kelley v. United States, 59 F.2d 743, 744 (E.D. Mich. 1932).

Colvin v. Jacksonville, 158 U.S. 456, 459-460 (1895).

United States v. Corrick, 298 U.S. 435, 440 (1936).

Minnesota v. Northern Securities Company, 194 U.S. 48, 65-66 (1904).

VI. Because Claims Outside the Court's Jurisdiction Must Be Dismissed, Annoyance and Undue Burden and Expense Would Be Imposed on the Defendant were the Court to Require the Defendant to Respond to Plaintiffs' Requests for Admissions.

Claims in respect to which the Court lacks jurisdiction

should be dismissed. To require the defendant to respond now to plaintiffs' request for admissions would result in annoyance and undue burden and expense.

Only after dismissal of such claims will it be feasible for plaintiffs to define clearly and precisely their remaining claims, if any, in terms of individual plaintiffs, specific allotments, dates, and docket numbers. Only after the plaintiffs have precisely identified their remaining claims, if any, and stated clearly the relevancy of a particular claim or claims to a request for admission, should the defendant be ordered to respond to any request for admission.

In the absence of the foregoing precaution, the Court and the parties will be burdened with a mass of irrelevant material having no bearing on plaintiffs' remaining claims within Section 1491 and that arose within the six year jurisdictional period. Such a burden would consume needlessly and fruitlessly the time, energy, and attention of the Court and the parties. To save money and time, the attention of the Court and all parties should be focused on plaintiffs' claims, if any, that are within Section 1491 and accrued within the six-year period prior to suit. The record must not be encumbered with a conglomeration of irrelevant material.

That the claims over which the Court lacks jurisdiction under Section 1491 or that accrued before October 18, 1965 should be dismissed is established by the following cases:

New Orleans Mail Company v. Flanders, 79 U.S. (12 Wall) 130, 135 (1870).

United States v. Buckabee, 83 U.S. (16 Wall) 414, 435-436 (1872).

Stickney v. Wilt, 90 U.S. 150, 162 (1874).

443 Cans v. United States, 226 U.S. 172, 184 (1912).

Mitchell v. Maurer, 293 U.S. 237, 244 (1934).

Carey Drilling Company v. Murphy, 113 F.Supp 226 (D. Colo. 1953).

VII. The burden of proof is on the plaintiffs to establish jurisdiction throughout the course of the litigation.

A. The burden rests on the plaintiffs to prove (a) that the Court of Claims has jurisdiction under Section 1491, and (b), as to Section 2501, that their alleged causes of action accrued by, or did not exist before, October 18, 1965, which is six years before October 18, 1971 when the first petitions were filed herein.

In respect to plaintiffs who became such after suit was filed, the 6 year period would begin 6 years before they became plaintiffs. Matson Navigation Company v. United States, 284 U.S. 352, 359 (1932), aff'g 72 Ct.Cl. 210 (1931), Lukenas v. Bryce's Mountain Resort, Inc., 538 F.2d 594, 597 (C.A. 4, 1976).

B. The plaintiffs must sustain their burden of proof by a preponderance of the evidence.

This was not accomplished by the plaintiffs. See the transcript of the jurisdictional trial in Seattle on January 20 through February 3, 1977, and the exhibits referred to in that transcript.

McNutt v. General Motors, 298 U.S. 178, 187-189 (1936).

C. The status of plaintiffs as allottees does not relieve them from the burden of proving jurisdiction.

United States and Walker River Paiute Tribe v. Southern Pacific Transportation Company, 543 F.2d 676, 682 (C.A. 9, 1976).

D. Jurisdictional requirements must be met by each plaintiff allottee individually.

Lunsford v. United States, 418 F.Supp. 1045, 1048-1050 (D. S.D. 1976).

Lukenas v. Bryce's Mountain Resort, Inc., 538 F.2d 594 (C.A. 4, 1976).

E. Any claim by each individual allottee plaintiff under either of the two long term contracts became subject to the six-year jurisdictional statute of limitations when payments were disbursed to, or credited to the Individual Indian Money account of, such plaintiff.

The jurisdictional six-year statute of limitations began to run as to each plaintiff allottee as to his allotment, or as to the part thereof from which timber was cut during the quarter, when the BIA disbursed to him, or credited his IIM account with, the timber proceeds for the quarter. This is in accord with decisions that compensation payable periodically involves multiple causes of action. Each successive failure to pay adequate compensation creates a new cause of action. Because the purchaser's obligations under each of the two long term contracts in respect to each plaintiff allottee pertain

only to the specific allotment in which the particular allottee owns an interest, the claims can be appropriately divided on a time basis. It is plaintiffs' burden to prove by a preponderance of the evidence which plaintiff, which allotment, and which claim of that plaintiff fell within either six years before filing of the petitions on October 18, 1971 or six years before a particular plaintiff became such plaintiff in the suit after filing.

Burich v. United States, 177 Ct.Cl. 139 (1966).

Russell v. United States, 161 Ct.Cl. 183, 186 (1963).

Friedman v. United States, 159 Ct.Cl. 1 (1962). cert. den. 373 U.S. 932.

Irving Air Chute, Inc. v. United States, 117 Ct.Cl. 799, 93 F.Supp. 633 (1950).

Hebern v. United States, 132 Ct.Cl. 344 (1955).

Art Center School v. United States, 136 Ct.Cl. 218, 227 (1956).

Calhoun v. United States, 173 Ct.Cl. 893, 896 (1965).

Western Oil Fields, Inc. v. Pennzoil United, Inc., 421 F.2d 387, 390 (C.A. 5, 1970).

Gruca v. United States Steel Corporation, 360 F.Supp. 38, 48 (E.D. Pa. 1973).

VIII. Neither possible hardship nor the merits of the litigation have any bearing in determining jurisdiction.

Hardship is irrelevant to the issue of jurisdiction.

Gibbons v. United States, 75 U.S. (8 Wall.) 269, 275-276 (1868).

Fort Sill Apache Tribe of Oklahoma v. United States, 201 Ct.Cl. 630, 643 (1973).

Osman Sharrieff, et al. v. United States, 205 Ct.Cl. 830 (1974).

Kreiger v. United States, 539 F.2d 317, 321-322 (C.A. 3, 1976)
Carr v. Veterans Administration, 522 F.2d 1355, 1358 (C.A. 5, 1975).

Roberts v. United States, 498 F.2d 520, 526 (C.A. 9, 1974).

Mann v. United States, 399 F.2d 672 (C.A. 9, 1968).

Goldstone v. Payne, 94 F.2d 855, 857 (C.A. 2, 1938), cert. den. 304 U.S. 585.

The merits are irrelevant to the issue of jurisdiction.

Davidson v. Rafferty, 34 F.2d 700 (E.D.N.Y., 1929), aff'd 39 F.2d 1022 (C.A. 2, 1930).

IX. Conclusion.

For the foregoing reasons, defendant's objections should be sustained. The Court should deny plaintiffs' Motion for Order Directing Defendant to Respond to Request for Admission.

Dated this 10th day of May, 1977.

Respectfully submitted,

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1/14/75

SIZE OF LOGGING UNIT ISSUE

Plaintiffs' Allegation

"Defendant imprudently invited bids for large, ... logging contracts, especially three such contracts in the Taholah, Queets, and Crane Creek units ... ." Plaintiffs' More Definite Statement 3(c), Dec. 30, 1971.

Overview of Record

The principal objection to the size of the logging units seems to be that it reduced the bidding competition to a few large operators. Presumably, this would result in lower stumpage values returned to the owners. However, the number of bidders is not the only guarantee or determinant of a fair price.

Ever since the beginning of timber sales on the Quinault Reservation, the policy has been to include as many allotments into a sale unit as possible. See IA20.2 and IA27.4. The exceptions to this have been in cases of extreme need by allottees whose allotments were accessible, the salvage sales of windthrown or otherwise damaged timber, and the sales in the Queets Unit. It was felt that the allottees as a whole would get a better price for their timber when it is a part of a larger unit. This is because the more isolated and poorer grade timber may be sold in the same unit with more accessible and higher grade timber. See IA27.4, IIA43.1, IIA43.2, IA46.9, IA47.23, IR53.2.

Where it is necessary to build extensive systems of access to the timber, it is necessary to offer a large enough volume of timber for the purchaser to amortize the developmental and other costs before anyone

could be induced to buy the unit. See IA20.4, IA43.1, IA37.3, IA43.2. Since the Quinault Reservation was a virgin area, there were no railroads or highways into the area and it was necessary for the purchasers to build their own. As truck logging replaced railroad logging, some of the impetus to offer large blocks of timber was removed because of the consequential decrease in developmental costs. See IA37.7. Nevertheless, it is still an important consideration.

Another advantage of the larger sale over small sales is that it allows costs to be distributed more equitably. For example, it would not be fair for one allottee to bear the entire cost of the construction of a bridge which would open up access to a dozen other allotments. See IA47.23.

On the Quinault Reservation there is an additional reason why larger sales are preferred over small sales. That is the fact that the timberland is broken up into hundreds of allotments, the owners of which do not receive any income from their holdings unless a contract for sale of the timber on their allotment has been made. IA20.2, IA49.6, IR52.14(a), IR52.16. Thus, if an orderly harvest is to be made, the pressure to provide income to the allottees would have to be reduced. The solution arrived at by BIA officials was to make contracts which would include large number of allotments and require the purchaser to make periodic advance payments to the owners. Thus, the allottees would still receive some income from their timber, even though it may have been included in a fire barrier or seed source and would not be logged for years. IA45.1, IA48.2, IA49.6, IR52.14(b), IR52.19.

By the time it was possible to log the timber north of the Quinault River, the pressure to sell the timber in one large block was very great. Several proposals and requests were made for this to be done. IA29.5, IA29.3, VJ36.1, IA38.13, IIA38.3, IA43.1, VJ47.1. There was an attempt in 1929 to sell this timber in four large units, but the bids were rejected, and before they could be readvertised, the market crashed and the economy plunged into a depression. Following the war, market prices again climbed and the sale of the timber was again considered. IA29.3, IR52.14(b). See "Timing of Offer for Sale." By now, nearly all the logging or existing sale units on the reservation were completed or nearing completion. Many of the original allottees had passed on or entered old age, and were in even greater need of funds. The timber stand had reached a state of over-maturity, where the loss each year to windfall and decay exceeded the annual growth increment. The Aloha Lumber Company, which had the closest sawmill in the vicinity of the reservation, was about to go out of business unless it could be assured of a large volume of timber from the reservation. In response to the proposed sale of the Taholah Unit, the Tribal Council demanded that all the remaining unsold timber be sold or none at all. Allottees were besieging the BIA with applications for fee patents (which were being denied because of the pending sales), and requests to sell their timber. See "Timing of the Offer of Sale."

Under these circumstances the BIA decided that the best solution was to place all the remaining unsold timber under contract at the earliest practical date. VJ47.3, IA48.8, IA48.2, IA49.6, IR52.14(a). After much

opposition from small operators to the proposal to sell the timber as one block, it was eventually decided to offer the timber in three large blocks and one smaller block. IA48.8, IA48.16, IA48.3, IIA48.1, IA48.1, IA49.7, IA49.6, IA49.10, IR52.14, IR52.16, IR52.19, and IR53.2. The units, bid deposits, and advance payments were still too large to permit the small operators to bid. The BIA felt unable to reconcile the desires of the small operators for small, short-term sales, with the urgent need of placing all the remaining unsold timber under contract promptly while at the same time spreading the actual cut over a 25-year period. IA49.6. Ultimately, however, the small operators have been able to make purchases of smaller blocks of timber on the reservation in the Queets Unit.

Reasons for Rejecting Small Sales

1. Desire and need for all allottees to receive income from timber within a reasonable period of time. IA20.2, IA42.13, IA43.6, IA44.10, VA45.1, IA46.9, VJ47.3, IA48.8, IA48.2, IIA48.1, IA49.6, IR50.4, IR52.14(b), IR52.16, IR52.19.

2. Difficulty in managing a large number of small sales efficiently and to make an orderly harvest under principles of sustained yield. IIA37.1, IA47.2, IA48.10, IA48.8, IR50.4, IR52.19, IR53.2.

3. Appropriations were not sufficient to provide the necessary supervision over a large number of small sales. IR50.4.

4. Possible dissatisfaction and confusion among the allottees over the differing rates for a given species which would likely be obtained. IR52.19.

5. Difficulty in laying out logging units which would balance good and poor timber along natural topographic lines. IR52.19.

6. Impossibility of amortization of the great cost involved in opening up the area with logging roads. IA47.2, IA48.8, IA48.2, IR52.19.

7. The fact that most small operators are under-financed and find it very difficult to make advance payments which would be required. IIA37.1, IIA38.1, IA48.8, IA49.7, IR52.19.

8. Many small operators do not recognize the value in proper forestry practices and do not leave the stands in a productive condition. IIA37.1, IIA38.1.

Contra: IA49.7.

Reasons for Favoring Large Units

1. Some income from the timber would be received by all the allottees immediately. IA48.8, IA48.2, IA49.6, IR50.4, IR52.14, IR52.19.

2. Better price may be obtained for the timber as a whole, since larger sales, which will provide stability and allow amortization of large capital outlays, are more attractive to buyers and they will be willing to pay a higher stumpage price. IA27.4, IIA43.1, IIA43.2, IA47.23, IR53.2.

Contra: IA48.3, IA49.7, IA49.10, IR52.14(3), IIA43.2.

3. Easier to make an orderly harvest in accordance with principles of sustained yield, fire protection, and reforestation. IA43.1, IA47.15, IA47.2, IA48.8.

Contra: IA49.7.

4. Tribe and members themselves wanted all of the timber sold as soon as practical. VJ47.1, VJ47.3. See "Allottees - Desire for Immediate Sale."

5. Would provide stability to local industry. IR52.14(a), IR52.16.

Questions for Further Investigation

1. Where are records mentioned in IA27.4, which show that financial return to allottees who sold before sale of large units received only 10-25 percent of amount realized for those who sold allotment in a large unit?

2. Why were bids rejected in 1929?

3. How did the advent of truck logging affect the pattern of timber sales and the industry? IA37.7.

4. Are there examples in the records of difficulties with small operators in enforcing forestry regulations and making collections? IIA38.1.

5. How large does a sale unit have to be before it is economical to establish sawmills, build roads, etc.? IIA43.1.

6. What would have been the effect of making small sales in Taholah and Crane Creek? Would they have been similar to experience in Queets? What returns have allottees in Quaats received compared to what they would have received had it been sold as one unit?

7. Why was Queets Unit never readvertised?

8. How were boundaries for the units determined? Why did they differ from the boundaries used in 1929? IJ47.2.

9. Is the fire hazard greater in Queets area because of the small sales? How have the development costs been amortized in the Queets area? IA47.2.

10. What was the experience of sales from 1935 to 1948 which were all to small operators? IA48.8.

11. What unit combinations were studied in the conferences in 1948? IIA48.1.

12. What are the reports of BLM mentioned in IA49.7?

13. Would it have been impossible to supervise a large number of scattered sales, or merely difficult because not enough money had been appropriated by Congress? IR50.4.

14. Why would it have been necessary for annual cut on each sale to be proportionately reduced so that sustained yield for the reservation as a whole could be achieved? IR50.4.

15. When and by whom was it first considered to subdivide the area into 25 units? IR52.19.

16. Can we get transcripts of proceedings of congressional hearings by Committee of Interior and Insular Affairs on September 25, 1925? Did they issue a report? IR53.2.

Slash Disposal

Summary of information contained in documents referred to in the index.

IA18.2 - Letter from Forest Assistant at Large N. O. Nicholson to Commissioner of Indian Affairs, Nov. 21, 1918.

Informs that operations for airplane material have ceased now that the armistice has been signed and work has started on cleaning up. Brush and debris are being burned to remove fire hazard. In September one of these small fires got away and burned 17 trees.

IIIB20.1 p 4 - Moclips K. directed slash to be burned.
Directed the times and manner in which it should be burned.
General Timber Sale Regs. attached p 9 Nos. 25-27 directed slash to be piled and burned. Burning directed by forestry officer. Unsatisfactory disposal of slash could suspend all operations of purchase until corrected.

IIIM22.1 p 7 - Quinault Lake K. directed slash to be burned. See above.

IIIL22.1 p 6 - Pt. Grenville K. directed slash to be burned. See above.

IA24.6

a) Letter from Supervisor of Forests to Aloha Lumber Co., 5/1/24

Grants permission to burn slash until May 15.

Warns that Aloha would be responsible for any damages.

b) Letter from Supervisor of Forests to Frank Briggs, 5/17/24

Directs to observe and report on precautions taken in burning slash by contractors working on right of way for Olympia Highway.

IA24.15 - Letter from Superintendent to Alfred P. Knutson, 11/1/24

Demands payment for damage done by two fires which got out of control while Knutson was burning slash in right of way for Olympia Highway.

1A26.6 - Letter from Superintendent W. B. Sams to Aloha, M. R. Smith, Hobi, and Ozette Ry. Co., 3/3/26

Prohibits all slash burning during spring months. If necessary to burn for protection, must first make request in writing.

1A26.4 - Letter from Commissioner Chas. H. Burke to Supervisor of Forests Henry B. Steer, Aug. 7, 1926.

Refers to article in July, '25 Timberman by Frank H. Lamb concerning burning of slash in West. Wash. and Oregon.

Comments - that dependence upon young growth for fire protection has been discussed for 2 or 3 decades; that Indian Services have always in regs. and K's provided large discretion as to method of disposal but that any method other than that generally approved by Fed. and State forest agencies be used only with express approval of Commissioner; that problem was discussed 10 years before on the Tulalip Reservation and decided that burning was only safe method.

Authorizes that Steer make a study of slash disposal.

IA26.3 - Letter from J. P. Kinney and Lee Muck to Commissioner, Oct. 9, 1926.

Refers to IA26.4.

Report visit to logging operations on Quinault Reservation.

Observe that an unexpected amount of reproduction exists on logged off areas and that if fires can be kept out of slash areas in a few years the fire risk will be no greater than if burned over; that there is greater fire risk in an unburned slash area but that the probabilities of reforestation are greater if unburned and Indian Services should expend four times as much as in the past on fire protection.

Recommend that Superintendent of Taholah jurisdiction be instructed that policy is to leave slash unburned unless written permit from forest officer is given.

IA26.2 - Letter from Commissioner Burke to Superintendent of Taholah Agency Sams, Oct. 19, 1926.

Refers to IA26.3 and letter from Steers June 28, 1926.

Instructs Superintendent that the policy will be as recommended in IA26.3, to leave slash unburned and to improve fire protection.

IA26.7 - Letter from Superintendent to Ozette Ry. Co., 11/13/26

Informs that policy of Indian Office hereafter on the Quinault Reservation is to leave slash unburned. Burning for protection of camps,

bridges, etc., will be allowed only under written permit. To increase fire protection all snags over 12 feet must be felled.

IIA28.1 - Annual Forestry Report transmitted by Supervisor of Forests Steer and Superintendent Sams to Commissioner of Indian Affairs, 8/2/28, p 13.

Discusses problem of fire protection under policy of nonburning of slash. Intention expressed of submitting fire plan early in next fiscal year. Need system of patrols, quicker access to tools, and lines of communications.

IA29.29 - Letter from Superintendent Sams to Alex Polson, 4/1/29

Informs that contracts on proposed four units of timber would differ from his contract on Quinault Lake in only a few aspects. One of these is the required burning of slash if in the discretion of the Commissioner it is necessary.

Refers to paragraph 25 of General Timber Sale Regulations which provide for piling of slash, etc., unless some other method is provided in contract.

Points out that new contracts would not contemplate piling of slash.

IIA30.2 - Report by Reforestation Committee of Grays Harbor Forestry Board, 4/2/30

Reports that abundant evidence from studies of Forest Service and others, that burning of slash is detrimental to prompt and full reproduction. One burning of slash destroys large part of seed stored in soil, kills

seed trees, consumes very little of slash accumulating, leaves heavy material exposed to sun to dry out and become an even greater fire hazard, and delays reseeding by 3-10 years.

Recommends to cut areas to leave strips of green timber between operations, prevent burning of cut-over timberlands, and seeks to repeal compulsory burning laws.

(Members of Committee - Frank Lumb, Chas. Albertson, W. C. Mumaw, Phil S. Locke, J. E. Calder)

IA32.5 - Letter from Superintendent Nicholson to Director of Forests J. P. Kinney, 7/15/32

Discusses problem of incendiarism due to high rate of unemployment. Hiring fire fighters would invite more fires and bring into question the policy of leaving slash unburned. If fires could be kept out of slash areas, there is no doubt that proper forest policy would be to leave it unburned.

Expresses opinion that policy of hiring no fire fighters may result in a greater burned-over area this year, but will save in the long run.

Relates opinion of Supervisor of Olympic National Forest Plumb that slash should be burned.

IIA32.1 - Report from Logging Engineer William Heritage to Commissioner, 9/26/32.

Comments that it has not been policy to run fire over logged areas because of belief that this causes ferns and fire weeks to grow which provide fuel for second and hotter fires.

States that Forest Service officials believe it necessary to run one fire over and try to keep second out.

Observes that there is a large area of slash unburned which contains considerable young growth, and that this presents a chance for incendiarism which was shown by number of fires set on July 1.

Reports that Supervisor Howarth's and Superintendent Nicholson's decision not to hire anyone to fight one of these fires took nerve as it burned for three days, but apparently worked since no more fires were set during the season.

IA35.1 - Letter from Howarth to Director of Forestry, U.S.I.S., Klamath (IA35.16)
Agency, Robert Marshall, Sept. 23, 1935.

Informs that K provisions for burning slash are found in identical language in the Quinault Lake, Mounts, Pt. Grenville, Moclips, Cook Creek, Hall, and Hatch Units. The same provision with the addition "if the Commissioner of Indian Affairs shall require it" appears in Upper Wreck Creek Unit K approved 9/17/27.

Quotes IA26.2.

VIIA36.1 - General Forest Regulations signed by Commissioner of Indian Affairs John Collier, approved by Sec. of Interior Harold Ickes - USDI, Office of Indian Affairs, 4/23/36

States policy that where selective logging or partial cutting is usual, standard method of disposal is lopping, piling, and burning the brush. Piles to be located so as not to injure reproduction or reserved trees.

Broadcast burning only allowed on restricted clear cut areas controlled by fire lines or other barriers.

IA37.10 - Letter from Superintendent N. O. Nicholson to Commissioner of Indian Affairs, 8/6/37 or 8/7/37.

Inquires whether State could declare slashings a hazard and require their abatement, under Sec. 18 or 218 of 1934 laws.

IIA37.1 pp 4-5 - Report from Logging Engineer Patrick Gray, concurred by Superintendent Nicholson to Commissioner, 10/21/37

Observes that burning slash does not remove fire hazard and delays the start of new reproduction or makes planting necessary.

Recommends that no burning be permitted and to make further study.

IIA38.1 p 5 - Report from Logging Engineer Patrick Gray to Commissioner, 4/2/38.

Comments that questinn of burning slash is an open one but his opinion is that it should not be permitted.

Observes that due to the amount of debris on the ground and the unusual amount of rainfall the burn is seldom clean and renders the fire hazard greater; that fire runs over slashing areas make planting necessary; that the cheapest way of reforesting the land is to prevent all fires.

IA43.7 - Letter from Arnold Polson to Superintendent LaVatta, 9/10/43.

States that Ozette has been successful in reforesting most of logged-off lands without burning and thereby placing them in reproduction 10 years

or more before it would have been otherwise possible to do if the lands had been burned as a safety measure.

IIA43.3 - Report from Regional Forester Frank Lenzie to Commissioner of Indian Affairs, 12/13/43.

Responds to Director of Forestry L. D. Arnold's request for suggested changes in General Timber Sale Regulations.

Recommends that slash piling not be limited to selectively cut areas and that other methods be allowed when conditions are not suitable for piling and burning.

Recommends that right of way slash be piled and burned unless waived in writing by officer in charge.

IIJ57.2 - Report of Stumpage Value Study by Forest Manager John Libby, 8/1/57.

Reports that real benefit of salvage of residual cedar is the removal of vast amounts of combustible material and the increased chance of reproduction. The revenue from salvage is only a secondary benefit.

Estimates costs per cord on salvage.

IIR58.1 - Forest Officer's Report on Crane Creek Logging Unit by Assistant Forest Manager Don Clark, 3/6/58.

Reports that controlled spot burning in areas of heavy cedar volumes is being contemplated in order to decrease fire hazard and to provide better seedling establishment by increased exposure of the soil.

Recommends however that salvage should take place before burning.

IIA59.2

a) Letter from Superintendent Ringey to Area Director Foster, 2/20/59.

Comments on pictures taken by Claude Wain of logging slash.

States that slash can be reduced materially by salvage operations, followed by burning, but even at best, much will remain.

States that it is essential for debris to be substantially reduced to expose soil so windblown seeds will have a chance to germinate and take root. This could be done by burning but we don't want to burn until after salvage.

b) Report from Area Forester to Area Director, 3/6/59.

Reports that in open slash areas seedlings may die during hot summer months if they can't get roots into the mineral soil.

Reports that staff hesitates to burn heavy slash until salvage material is removed. Burning has been initiated on Taholah Unit in cedar areas when salvage has been completed.

Reports that on national and state forests the slash is burned the first fall following logging.

Concludes that Bureau should do more slash burning, especially in cedar areas.

c) Report from Area Forester Weaver to Area Director, 3/12/59.

Reports that Richard Forheim of Forest Service stated that F.S. burns slash at earliest opportunity after burning. Their primary purpose is to reduce fire hazard and secondarily the exposure of mineral soil, and facilitation of planting. Areas of poor site with shallow soils are not

burned. If natural reproduction is established before burning is possible, the area is not burned.

d) Report from Chief, Branch of Forestry, George Kephart, to Commissioner, 3/24/59.

Reports on results of investigation done in response to Claude Wain's complaints to Senator Murray.

Reports that USFS and the State have general but flexible policy of burning clearcut areas.

Reports that spot burning after salvage operations on the Taholah Unit has begun and that spot burning on Crane Creek is being held up pending development of salvage procedures.

IA59.5 - Letter from Acting Commissioner of Indian Affairs H. Rex Lee to Senator Thomas Kuchel, 10/5/59.

Comments that much of large slash accumulation is from material on ground before logging.

Remarks that if burning is possible much of heavy material will remain, unless conditions are dry enough to allow most of it to be consumed. However, it would be too dangerous to burn under such dry conditions.

IA59.1 - Letter from Area Forester Weaver to Area Director, 10/19/59.

States that it is unfortunate Bureau can't burn slash and plant as does the USFS on Olympic National Forest.

Recommends burning slash on heavy cedar cuttings to expose soil and encourage reproduction.

IR59.9 - Letter from Forest Manager John Libby to Allottee Claude Wain, 12/2/59.

Informs that James Ross would show Wain areas where salvage has been completed and the heavy debris has been burned.

IA60.1 - Memo from Foresters, John Drummond and Lynn Hatch, to Area Forester, 3/22/60.

Reports on preparation of supplements to the Manual for new timber contract forms and Standard Timber Contract Provisions. Sec. 15 of Manual states that treatment of slash will be covered by special provision for each sale. Secs 9(a) and (b) of Standard Provision will not apply.

VIIIA62.1 - Plan proposed by Forest Manager John Libby, 4/10/62.

States that reduction of excessive slash accumulations by burning had recently begun.

IIA62.4

a) Report by Foresters Wayne Turner and Donald Collins, 4/26/62.

Photographs show exposure of mineral soil following burning of slash in cedar area and the heavy accumulation of slash around settings.

b) Memo from Assistant Forest Manager Don Clark to Forest Manager John Libby, 5/4/62.

Reports that no burning has been done on landings or settings on Crane Creek because of difficulty in controlling burning on flat topography.

VA67.1 - Report of a meeting by Forester Robert Hickman to Area Director, 9/29/67.

Stated by Hadley that meeting was a result of request of Area Director to review slash disposal practices following Raft River fire. The ownership pattern and cost of modified contracts to provide for slash disposal which would be borne by stumpage owners present problems.

Stated by Clark that agencies and companies have varied opinions on the effect of burning slash on regeneration. State plants immediately after burning. Weyerhaeuser does a lot of burning in hemlock stands but results are inconclusive. Crown Zellerbach does not burn in hemlock stands. USFS burns in hemlock stands but plants Douglas Fir.

Reference made by Clark to meeting held by State at Lake Quinault recently where logging operators on fee lands stated concern about legal implications of burning.

Concluded that recommendations on slash disposal should be developed and sent to Washington Office.

IA68.1 - Memo from Forester Greg Stevens to Acting Area Forester Lee Winner, 4/25/68.

Answers Skarra's questions that slash disposal on Quinault would cost $12/acre and reduce stumpage rates by $.20-$.25 per M ft. BM. Follow-up planting would cost $.50 per M ft. BM.

States that USFS in Olympic National Forest burns where possible, but leaves a great percentage unburned. State of Wash. trail blocks an area, broadcast burns, watchmen prevent spread. The cost averaged $10.35/acre

but varied from $4.63/acre to $47/acre. In Queets, operators do not do any slash abatement work.

States that points in favor of burning slash are:

1) Reduction of flash fuels
2) If clearance given by State, it assumes 100% of costs of suppression if fire occurs
3) It is logical method.

States that points against burning slash are:

1) Heavy fuels are not consumed
2) Immediate burning reduces by-product returns such as shake board and chip sales.
3) Where varied ownership and uncontrolled cutting such as on Queets, slash burning is impossible.

IIA68.1 - Report from Forest Manager Don Clark to Assistant Superintendent John Gordon, 9/16/68.

States that greatest benefit from slash disposal is the reduction of highly flammable fuel. Heavy materials are rarely consumed. Risks of disposal by burning are great as is the financial liability should a fire get out of control. In steep terrain erosion may be accelerated. All areas burned must be planted or seeded--which costs money. Prior to burning slash should be utilized to greatest extent. Estimation of chip material on Quinault is 80-100 million feet BM. There has been no controlled slash burning except experimentally in Sept. 1959 on Taholah Unit

Reports that no hazard from slash exists now on old logging units south of Quinault River. State Dept. of Natural Resources within past 2 years has issued slash clearances on all logging units except Taholah, Crane Creek, and Queets.

Reports that on Queets, unlike Taholah and Crane Creek, the staggered-setting system is not used. All the timber on a privately owned tract can be logged provided a bond is posted with Dept. of Natural Resources to guarantee planting. State law does not require slash burning and none has been done on Queets. Even if BIA burned slash on trust areas in Queets, this would not reduce hazard since most slash is on private land and fires there would spread to trust lands and destroy results of any planting which had been done.

Reports USFS guidelines for slash burning: It must be necessary for fire protection or to establish seed bed. Effects on air pollution and watershed must be considered. Size of blocks vary from 15-85 acres. Burn in fall when moisture content is 13 in slash and 20 in surrounding timber. Cost per acre is $25, direct cost is $12, the rest is for USFS personnel. Planting is mandatory. Olympic National Forest has very little cedar.

Reports that to dispose of slash on an 80-acre tractit would cost around $2,000. To plant by hand, it would cost an additional $2,000. Thus $1.30-1.60 per MBM would have to be assessed to cover burning and planting costs. If no assessment made, it would require an appropriation of about $120,000.

VQ68.1 - Minutes of meeting of Queets Unit operators and landowners, by Robert P. Matthews, 11/13/68.

Stated by Dept. of Natural Resources, Field Supervisor E. C. Gockerell, that there is too much slash on Queets to burn all of it. Suggested that specific areas of recent logging be burned. Suggested developing a coordinated logging and slash burning plan in order to provide fire breaks.

Stated by Dept. of Natural Resources, Division of Fire Control, Supervisor Loren Tucker that cedar flash fuels remain a significant factor for 30 years or more. Prompt reforesting significantly reduces the hazards by shading the slash and thus increasing its moisture content.

Suggested by participants that BIA is obliged to participate financially in slash abatement. Perhaps BIA could provide a blanket liability insurance policy.

Commented that Queets Forest Protection Association would be logical coordinator of a plan.

Commented by Gockerell the value of lost growth potential should be considered when weighing utilization alternatives to slash burning. He estimates average annual growth at $25-50 per acre per year once reproduction is established.

Concluded that another meeting should be held.

VA68.1 - Memo of public meeting by Foresters Meeker and Stevens, 11/25/68.

Discussed fire break plan in Queets area.

Concluded that operators are not willing to assume liability for fire escape. If a plan could be worked out they would be willing to try it

as a group but not as individuals. Regulation of cutting on Queets would have little support.

VIIA69.1 - Policy statement by USDA Regional Forester Charles A. Connaughton, 3/27/69.

Informs of two major revisions of Slash Treatment Policy of USDA. One involves slash clean-up on road construction jobs. The other involves yarding of heavy fuels on cutover areas.

Stated that their past practices hindered effective fire control. Thinning young stands would be facilitated by cleaning up large defective material.

Provides detailed regulations and standards for slash disposal, requiring 100% disposal in certain situations. Consideration of aesthetic standards is also given.

IA69.1 - Memo from Forester R. B. Heikel to Forest Manager Joe Jackson, 12/16/69.

Reports on investigation of portable chipping operations.

Concludes that although it would help reduce slash, the economic aspects are negative at this time. Further study should be done.

VR70.1 p 7 - Forestry Conference with ITT Rayonier. Memo from Forest Manager Jackson to Superintendent, 2/3/70.

Discussed slash disposal and plan to bring in a fire control specialist to study slash areas; the BIA's reliance on Certificates of Abatement to

cover liability for uncontrolled slash fires; handling slash disposal as technical phase of operations under BIA supervision and responsibility; problem of environmental pollution as not being great.

Informed that Rayonier does very little slash disposal by burning on their own lands.

IA70.2 - Memo from Forest Manager Joe Jackson to Assistant Superintendent, 5/25/70.

Reports on chipping project with Weyerhaeuser.

States that previous investigations did not consider cedar chips of which there would be great abundance on Quinault. Weyerhaeuser representatives were amazed at amount of cedar waste.

Discusses various methods which would allow Weyerhaeuser to contract for material. Weyerhaeuser will make a study.

IJ70.11

a) Letter from Forest Manager Jackson to Harold Stilson of Evans Products Company, 7/21/70.

Comments that huge volumes of slash on Taholah Unit almost preclude regeneration by any method; that the fire hazard is a major problem.

Suggests that there is a possibility that slash may be utilized in chip production.

Informs that the Quinault Tribe is willing to attempt the salvage operation; that Mr. Guyon of Weyerhaeuser said his company could do a pilot logging project.

Requests that Evans Products look into possibility with the Quinaults; that they set up a meeting with him.

b) Letter from H. M. Stilson, W. Wash. Div. Mgr. of Evans Products, to Forest Manager Jackson, 8/12/70.

Agrees to cooperate to find solution to slash problem as mentioned in Letter a) (IJ70.11).

c) Memo from Acting Superintendent Bushman to Area Director, Sept. 30, 1970.

Reports that burning will be a last resort because of objections to air and stream pollution; that attempt will be made to dispose of slash by chipping; that slash residue is marginal or sub-marginal in value; that a study is being made by Weyerhauser of value of slash for pulp production; that entity purchasing residue would be encumbered to reforest the land.

Suggests that sale could be expedited under 25 CFR 141.7(b).

IJ71.16 - Letter from Aloha Timber Manager Elmer Parker to Joe Jackson of the BIA, June 18, 1971.

Expresses opinion that reduction of slash and not immediate money is in the best interest of Indians.

Refers to passage of House Bill 1034 and expresses belief that best disposal method is salvage.

Suggests that stumpage be set on a reasonable lump sum basis and that this is in accord with recommendation of Public Land Law Review Commission.

IJ71.18

a) Memo from Joe Jackson to Supv. Forester Onnie Paakkonen, 9/29/71.

Reports that chances for selling slash are dim and that plans for burning slash in 1972 are being made.

Notation on bottom of letter indicates that "later discussions by OEP superseded these plans."

b) Letter from Acting Superintendent Beneditto to Elmer Parker of Aloha, 10/22/71.

Informs that plans for burning slash are being made.

IJ71.27 - Letter from Helen Mitchell, et al., to Forest Manager Joe Jackson, 10/3/71.

Informs of closure by tribe of logging operations on Taholah and Crane Creek Units.

Alleges violation of General Timber Sales Regulations No. 27 concerning unsatisfactory disposal of slash.

VJ71.2 - Extracts from proceedings before Judge Goodwin dated 9/30/71.

Found by the court, after reading letters marked Exhibit B-9, that the BIA Forest Manager had been doing his best to determine what was to be done with the burning of the slash.

IA71.7 - Memo from Acting Superintendent John Benedetto to Area Director, 10/22/71

Remarks that cedar slash on the Quinault Reservation is approaching the extreme critical stage in terms of hazard, reduction in productivity, and

damage to the fisheries, and the conditions now warrant emergency action by the Bureau.

Reviews investigations into various utilization schemes, and concludes that they have merit.

Recommends slash burning only if other alternatives fail. Estimated that the total annual cost of slash disposal and planting until the backlog is eliminated may approach $200,000 for a period of 10 years.

IA71.2 -
(IA71.8)

a) Report from Forester John Schneff to Forest Manager, 10/20/71.

Reports that comparison is being made between slash burns on the Quinault Reservation and Washington State lands.

b) Letter from Acting Superintendent John Benedetto to Wilton Vincent, 10/22/71.

Informs that in view of the dim prospects of selling the slash it would be necessary to proceed with plans to burn slash.

Requests that fire lines be constructed around slash areas in accordance with BIA instructions.

c) Letter from Acting Assistant Area Director Kenneth Hadley to Commissioner of Indian Affairs, 10/27/71.

Requests funding in the amount of $100,000 for 1973.

Discusses other alternatives to fu[illegible]ng, including return of administrative deductions to the degree which they have exceeded expenditures, the current balance of which is $425,000. The other alternative is to require the purchaser to dispose of the slash. This, however, would involve a cost

allowance to the purchaser against stumpage. In view of the controversy over stumpage rates, this is not recommended.

IR71.12 - Letter from Wilton Vincent to Superintendent Felshaw, 11/3/71.

Refers to letter dated 10/22/71 about plans to burn slash.

Informs that Rayonier will expect that cost allowances will be made, and that the BIA will assume responsibility for any extra expense or liability that might result from slash burning.

IA71.20 - Letter from EPA Acting Regional Administrator Douglas Hansen to Area Director Dale Baldwin, 11/4/71.

Reports on inspection of logging practices on the Quinault Reservation done at the request of the Quinault Tribe.

Reports that large clear cut areas are so totally covered with slash that reforestation was not occurring after 8 to 10 years, and in some cases over 30 years.

Expresses opinion that present conditions on Quinault Reservation do not indicate compliance with the contract, including slash disposal.

Suggests a meeting to discuss these matters.

IA71.18 - Letter from Pacific Northwest F&R Experiment Station Director Robert Buckman to Tribal Council Member Guy McMinds, 11/8/71.

Refers to research note PNW-163 by James Howard concerning survey of logging residues and research paper PNW-115 by Dell and Ward concerning forest fuels following clear cutting which included a sample from the cedar stands on the Quinault Reservation.

Advises that conclusions should not be drawn from one sample.

VA71.1 - Report on meeting by Program Leader John Pierovich to Assistant Director K. H. Wright, 11/9/71.

Reports on an informal meeting with Guy McMinds and Helen Mitchell in which he discussed the forest residues program of the USDA. He explained that they could offer training of their foresters to do inventory job, but that it would not be possible to make a complete inventory of residues and forester problems on the reservation.

Suggested to them that one of the reasons for residues being left on the reservation might be a need to return certain dollar percentage to the tribe. Suggestion was made that the flake board process might have application to some of the materials on the reservation. Promise was made to follow up at the Forest Products Laboratory on this matter.

Reports on follow-up with Coleman Vaughan on the Forest Products Laboratory concerning the suitability of Western Red Cedar for the flakeboard process. Vaughan's reply will be forthcoming. Also a meeting with Gene Pong and Paul Lane concerning a feasibility study for a pilot operation will be made.

IA71.12 - Letter from Superintendent Felshaw to Area Director, 11/12/71.

Reports that in some areas on the Quinault Reservation regeneration is excessively retarded and if it is found that cedar slash is responsible for this condition, a burning plan will be implemented.

IR71.7 - Letter from Forest Manager Joe Jackson to Wilton Vincent of ITT Rayonier, 11/17/71.

Requests that Rayonier allow Mr. Brumfield to resume salvage operations and no longer prevent him from doing so, since his operations would reduce slash residue.

VA71.2 -

a) Report of meeting by Forest Manager Joe Jackson, 12/6/71.

Concerns the Commissioner's review team.

Comments by Jackson that the State Dept. of Natural Resources salvages burns and resalvages with some success. Felt that hazard liability and lack of planting funds discouraged burning.

b) Report of meeting by Foresters Ray Lowder and John Schneff, 12/7/71.

Concerns the Commissioner's review team investigating committee tour of logging units on Quinault Reservation. Numerous observations of slash areas and areas where slash had been burned were made.

IA71.4 - Memo by Forester Victor Meeker to Area Forester, 12/6/71.

Reports on estimates made by the W. Washington Agency that there are 7,500 acres of cedar slash which have not attained restock status.

Reports that the cost to remove residues and to reforest promptly would be $45/acre for planting, $100/acre for slash disposal by burning, and $140/acre for removal of merchantable material for chips. Balancing the costs would be the added value of growth of $225/acre, reduction in

fire suppression costs of $1/acre per year, and unknown dollar amounts for improved aesthetic appearance and economic value of chips of an average of $595/acre, assuming such residues do not replace other materials available to the industry.

IJ71.21 - Memo from Assistant Area Director Galbraith to Emmet E. Willard, (IA71.11)
Acting Field Representative, Office of the Secretary, Dept. of the Interior, 12/7/71.

Reports estimates of values and costs of chip production of slash residue; acreage of slash areas not restocked; regeneration lag; cost of slash disposal by burning; other costs.

IA71.5 - Memo from Acting Asst. Area Director Kenneth Hadley to Superintendent, W. Washington Agency, 12/10/71.

States large accumulation of slash may be actual blockage to natural reseeding and to planting.

VJ71.1 - Meeting with Aloha, Tribe, and BIA Forestry. Memo from Asst. Forest Manager Wil Carey to the Files, 12/28/71.

Reports that Allen Gould of Aloha said they are willing to build fire trails around logging block and burn if no other way is found to lessen slash.

IIA72.6 - Report by EPA and BSFW Representatives, 1/24/72.

Reports from limited observation that heavy slash is present on most logged-over land. While below utilization requirements of the contracts, the slash appears to be of sufficient size and volume to make a salvage operation profitable. In some cases it may be desirable to forego salvage of residues since these may be intermingled with reproduction.

Found that the slash problem is well known to the BIA, but that recommended treatments of the slash, including salvage, have not been implemented.

Lists effects of slash on the future of the area as increased fire hazard, waste of wood fiber, aesthetic impairment, reduced regeneration, increased costs of future land management, and difficult access for animals.

IIA72.4 - Report from Asst. Area Director A. W. Galbraith to Commissioner of Indian Affairs, 2/29/72.

Refers to IIA72.6 - attaches comments by Forest Manager Joe Jackson, 2/17/72, that if purchaser fails to salvage within 2 years, BIA seeks salvage by other persons. BIA encourages salvage permitting under the two contracts in order to avoid the problems of securing powers of attorney from multiple owners. Also, this method enables scaling by the Grays Harbor Scaling Bureau, thus assuring accountability. Relates the reasons for the decision not to burn slash. States that the policy of the Bureau for many years has been to refrain from planting allotments because so many went fee patent and out of Indian ownership, and in recent years allotments have been replanted if needed. Indian people have objected to burning slash because it decreases

the chances of salvage for cedar shake and shingles. Environmentalists have objected because of adverse effects to the atmosphere and to streams.

IJ72.6 -

a) Memo from Acting Superintendent John Bushman to Area Director, 9/30/70.

Concerns sale of slash from Block 104 of Taholah. Present condition precludes regeneration, either natural or artificial. Burning will be a last resort due to objections by Indians and non-Indians over air and stream pollution. Instead, disposal of slash will be accomplished by chipping if studies show this is feasible. On blocks possessing a positive value, a payment equivalent to the cost of reforestation, or $40/acre, is suggested. The purchaser of slash would be required to reforest the land.

States that slash on the Taholah Unit represents an extreme fire hazard for at least 10 years.

Suggests that sale of slash could be made under authority of 25 CFR 141.7(b).

Mentions feasibility study and a pilot logging project by Weyerhaeuser. Aloha is willing to cooperate in this venture with Weyerhaeuser, and would agree to a contract stumpage rate of $2/cord, plus $.50 for administrative costs.

b) Memo from Acting Asst. Area Director Ken Hadley to Commissioner of Indian Affairs, 10/14/70.

Recommends secondary salvage for chipping of Block 104 as a pilot project. Estimates 10,000 acres of slash which would be available for this kind of salvage operation if the pilot proves feasibility.

c) Letter from Commissioner of Indian Affairs to Area Director, 11/16/70. Authorizes project on Block 104 as a pilot project.

d) Letter from Superintendent Felshaw to Area Director, 8/23/71.

States that the delay in commencement of the project has been hindered by disputes between Aloha and Weyerhaeuser concerning the contract. This problem has now been resolved and the two parties are ready to enter an agreement.

e) Letter from Superintendent Felshaw to Area Director, 2/2/72.

Proposes expanded area for salvaging cedar slash on Block 104.

Relates experience of a salvage operator, Mr. Lon Brumfield, who found an investment in a specially built small portable tower was necessary for yarding small material, and that a greater volume of slash is required to amortize investment in the tower.

Reports advantages of tower logging include less fire hazard, ability to log year around, easier to clear streams while yarding, and less damaging to advanced reproduction.

f) Letter from Deputy Commissioner John Crow to Area Director, 2/25/72. Authorizes expansion of the project.

IA72.2 - Memo from Forest Manager Joe Jackson to Commissioner of Indian Affairs, 3/20/72.

Recommends funding $3,000 to a project by the Quinault Indian people to burn slash at landings.

IIA72.3 - Report from Area Director Dale Baldwin to Commissioner of Indian Affairs, 4/28/72.

Reviews the history of slash treatment on the Taholah and Crane Creek units.

States that under these contracts the salvage activities were optional with the purchasers, and success in reducing cedar slash has been limited. The lack of a substantial market and the high cost of removal make it uneconomical to carry on extensive salvage operations. Cedar areas have been left open for possible salvage activity in the future in the hope that demand for the material would rise. At present time, purchasers are required to complete salvage operations within 2 years. This has been done in order to permit disposal by burning or chipping of such remaining slash. Salvage for pulp of cedar slash would require a demand for Kraft pulp, and at present there are no Kraft mills in the Grays Harbor area and only a limited export outlet for brownwood pulp.

Relates factors which contributed to a decision not to burn slash as: (1) slash contained large amounts of salvageable material; (2) burning would require planting to regenerate and funds for reforestation were not present at the time; (3) the cost of burning when natural regeneration could be obtained was not economical; (4) a study of the US Forest Service indicated regeneration of hemlock is more favorable when area is not burned; (5) fire risk of untreated slash did not appear excessive if reasonable caution was exercised; and (6) the slash left served a useful purpose in controlling the surface movement of soil in high rainfall areas.

Purchasers could be required to burn slash under the contract, but it is not recommended to decide to burn slash unless sufficient funds are provided to reforest the areas, since there is no provision in the contracts which requires the purchaser to reforest. Also, it is not clear whether the approving officer has authority to burn slash which may be salvageable by the allotment owner.

VIIA73.1 - General operating procedures of Timber Sale Administration, 8/30/73.

Prohibits slash disposal by burning except at landings, spall piles and piles rights of way debris as required and directed by the Forest Manager.

IJ73.8 -

IVA74.1 - Memo from Forest Manager Jackson to the Files, 7/15/74.

Contains photos of slash area that was burned by DNR.

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1/13/75

ALLOTTEES — DESIRE FOR IMMEDIATE SALE

DOCUMENT SUMMARIES

IA20.2 - Letter from Assistant Commissioner E. B. Meritt to Forest Examiner N. O. Nicholson, 7/23/20.

- Suggests that additional units of timber should be offered for sale on the Quinault Reservation since many of the allottees are desirous of obtaining funds.

IA21.1 -

(a) Letter from Assistant Commissioner E. B. Meritt to Forest Examiners Henry B. Steer and N. O. Nicholson, 3/21/21.

- Refers to letter of Oct. 28, 1920, from Competency Commission, composed of Messrs. D. E. Smith, Frank E. Brandon, and E. W. Shill, which enclosed a list of 53 incompetent allottees whose land they recommended be sold under the regulations governing sale of non-competent Indian lands.
- States that the Office is fully aware that the timber market in the Northwest is not favorable at the present time, but since it is reported that some of these allottees are in urgent need of funds, and many of them are desirous of disposing of their lands at the earliest practical date, the Office deems it advisable that a plan for the disposal of the lands be initiated immediately in order that funds for the use of the individual Indians may be obtained at the earliest practicable date.

(b) Letter from Assistant Commissioner E. B. Meritt to Forest Examiners Henry Steer and N. O. Nicholson, 3/21/21.

- Refers to same letter as above, except that the enclosed list was of 155 allotments of deceased Indians, with a recommendation that the land and timber be sold under the regulations governing inherited Indian land

sales since none of these allotments was being used for home purposes. Again states that because of the desires of the allottees, the land should be sold as soon as practicable despite the unfavorable market.

IA23.9 - Letter from Superintendent to Commissioner of Indian Affairs, 1/11/23.
- Refers to allotment of John Hawk, deceased Quinault Allottee No.558. One of the heirs husband has contracted tuberculosis and is in great need of funds. However, the other heirs of John Hawk are among those Indians who chafe at any Government restriction and have refused to sign for the sale of their timber.
- Requests that an enclosed contract be approved under provisions of the Act of June 25, 1910 (36 Stat. 855), which is relative to the partition of Indian estates as modified by the Act of May 18, 1916 (39 Stat. 123-127).

IA29.10 - Letter from Commissioner C. J. Rhoads to Forest Valuation Engineer Lee Muck, 7/6/29.
- States that most of the Indians who have been strongly opposed to these sales, known as the Lunch Creek, Joe Creek, Raft River and Cape Elizabeth Units, have no timber within the proposed units. On the other hand, a very large number of the Indians who hold timber within the units have signed powers of attorney requesting the sale of the timber.
- Requests, however, investigation into whether the prices bid represent substantially the full market value of the timber or whether there appears to have been a collusive agreement among the other operators.

IA29.12 - Letter from Superintendent Sams to Commissioner of Indian Affairs, 7/31/29.

- Refers to telegram of July 29 asking if he would recommend acceptance of bid on Joe Creek Unit even though bids on the other units were rejected.

- States that in his opinion the two primary considerations are the adequacy of the prices bid and the wishes and best interests of the Indian owners.

- States that of a total of 703 allotments within the four sale areas, a total of 347 allotments are covered by powers of attorney. The only reason why more have not been signed is because of the illness of the BIA personnel who would ordinarily obtain powers of attorney. However, since June 18 nearly 40 allotments have been signed up voluntarily without suggestion from the BIA. These Indians have come to the Agency and asked to be allowed to sign and resent the interference of non-interested parties in their affairs. The Indian opponents of the timber sales are the same few people from Taholah who have opposed every sale of timber on the reservation.

- Recommends approval of all four bids and suggests that the acceptance of one bid and rejection of the others would result in intense dissatisfaction among the Indian owners. Also states that the big majority of Indians who have signed powers of attorney for sale of their timber on the proposed units are urgently in need of funds, and should the sales not be approved, the Department will be besieged by applications for patents in fee simple.

IA29.18 - Letter from Supervisor of Forests Henry B. Steer to Commissioner of Indian Affairs, 10/21/29.

- States that in the absence of a definite policy of timber sales in the area north of the Quinault River, the Department will be besieged by applications for patents in fee simple.

IA36.25 - Letter from Superintendent N. O. Nicholson to Lee Muck, 3/27/36.

- Informs that Indians at a meeting in Queets on the night of the 25th have resolved to make a test case of their right to go onto their own allotments and log them.

- Reminds Muck that this situation arises from the Agency's allowing Dud Yerkes and others to log cedar on their allotments when they make the claim that they intend to build a home on the cleared area.

IA37.3 - Letter from David Baker to Director of Forestry, Lee Muck, 1/28/37.

- Informs that he has the names of 350 allottees on the north side who are requesting a little action on their timber before it is a total loss to them.

IA37.13 - Letter from Forest Supervisor James A. Howarth, Jr., to Superintendent N. O. Nicholson, 9/29/37.

- Concerns appraisal of timber on Henry Harlow allotment.

- States that the Office is aware of the pressure of Indians to permit logging of their allotments along the Olympic Highway and the threats to disregard our authority if we do not permit sales and logging.

- Recommends approval.

IA39.9 - Letter from Assistant Commissioner William Zimmerman, Jr., to Allottee Clara Jordan, 7/19/39.

- Acknowledges receipt of her letter of June 28 which requested information regarding the possibility of selling her timber.
- Advises that her allotment is so situated that it is impossible to log separately and that the present timber market prices would not represent the fair value of her timber.

IA40.3 - Letter from Assistant to the Commissioner John Harrick to Allottee Mrs. John Grimes, 4/15/40.

- Acknowledges receipt of letter of March 29 requesting authority to have timber sold on her allotment.
- Advises that her allotment is in a large timber unit which has not yet been sold, and there is no indication that there will be a market for the timber for sometime.
- Advises that she will be informed as soon as the timber unit in which her allotment is located is advertised for sale.

IJ45.1 - Letter by Superintendent George LaVatta to Commissioner of Indian Affairs, 5/28/45.

- States that allottees are much concerned that the timber is a mature virgin stand and should be cut so as to prevent further losses from deterioration, windthrow, diseases, insect infestation, or other causes, and to make possible the realization of income, especially to the many elderly and indigent Indians represented in the ownership. These views

were strongly expressed in two tribal meetings held recently on the Quinault Reservation.

IA45.13 - Letter from Superintendent George LaVatta to Allottee Mrs. Rebecca Kessell, 12/21/45.

- Refers to her request for information as to the prospects for sale of her allotment and advises that her allotment is located within a unit proposed for sale, and therefore there would be no advantage gained by having a cruise made of her timber at the present time or in making an individual sale of her timber.

IA46.9 - Letter from Superintendent Melvin Helander to Attorneys Metzler, McCormick and Metzler, 11/19/46.

- Refers to their letter of Oct. 21, 1946, regarding the allotment of their client, Mrs. Betty Hartsell, which regarded possible sale of her allotment and the surrounding allotments if their owners were willing.
- Advises that every allottee owner who has holdings in the section of the reservation which remains uncut is most willing to sell his timber. However, the reservation is limited to an annual cut of 65 million feet, which quota is completely taken up by acting cutting units at the present time. Now that several of these units are nearing completion, we hope to be able to offer new units for sale.
- Points out that their client's allotment is surrounded by virgin timber and that it would be to her advantage for it to be sold as part of a larger unit.

IJ47.2 - Letter from Acting Director Charles L. Graves to Commissioner of Indian Affairs, 1/13/47.

- Refers to Office letter of Dec. 4, 1946, which acknowledged receipt of the Forest Officers Report prepared by Patrie and McKeever in 1946, and which asked for additional information.

- States that proposal to restrict bidding to purchasers who could manufacture the timber on or close to the reservation was made after much discussion which concluded that there was little, if any, immediate prospect of securing agreement of the many Indian allotment owners to a tribal sawmill enterprise. Almost universally the allottees are in favor of selling their timber on the open market to the highest bidder for the highest possible cash return and have expressed no sympathy whatever for a tribal mill enterprise. Since over one-half of the allottees are members of the Quileute Tribe who reside on a reservation 60 miles distant, and of the Quinault allottees, only 25 percent of whom live on the reservation, it is easy to see why the tribal mill proposal carries little, if any, support among the allottees. When several years prior to this time the allottees were presented with the proposal to pool their interests under a corporate plan and then share in the annual receipts from cutting, the allottees as a group left no doubt that they were not interested in a cooperative undertaking but only in securing maximum returns from their stumpage by offering it on the open market for competitive bidding.

VJ47.2 - Memo of a conference between Quinault Business Committee and District Director E. Morgan Pryse and his staff on 3/10/47, written by District Forester Floyd Phillips, 3/12/47.

- Stated by Chairman Cleve Jackson that the Business Committee's objection to the sale of Taholah Unit was based on the fact that under the present plans the majority of the allottees who owned unlogged timber on the reservation would not realize any return on their timber holdings during their lifetime.

IJ47.1 - Letter from Commissioner of Indian Affairs to Tim L. Driscoll, 6/9/47.

- Refers to request that the timber on his sister's allotment be sold so that she may obtain the $6 or $7 thousand needed for hospitalization.
- Informs that her allotment is located within the proposed Taholah Unit but that because the sale is opposed by the Tribal Business Committee the Indian Office is giving the question further study and hopes that some plan satisfactory to the tribe will be worked out.

IA47.1 - Letter from Superintendent Melvin Helander to District Director, 9/29/47.

- States that pressure from the Indians who are anxious to have the timber sold is constantly before the Agency, and requests for patents in fee by the allottees continue in considerable force. There is little sympathy for delays in making the sale that are due to the work involved, and any explanations of the office work that are given to the Indian leaders are received as "so much red tape."

VJ47.3 - Memo of a meeting between the Business Committee and the Superintendent of the Taholah Agency and staff on 10/31/47, by Forest Manager Perry Skarra, 11/4/47.

The Business Committee was in favor of the big sale of the remaining timber in North Quinault, but made objections to the way it was being proposed, among which are the limitation on the annual cut for requirements of sustained yield, since the majority of the members would realize only 50 percent of the value of their timber, and secondly, the question with respect to the continuance of the Office of Indian Affairs since, if abolished, the allottees would be in a more favorable position to quickly dispose of their timber.

IVA48.1 - Article by Ray Richards appearing in the Seattle Post-Intelligencer on 7/8/48.

- Reports on a charge by Ralph Case, an attorney for the Quinaults, that the Quinaults had been denied an allotted share of the proceeds from timber cutting on the reservation because of a conservation obsession fixed in the Interior Department by former Secretary Harold Ickes.
- States that Case has called on the Indian Bureau for data on which to base a possible claim before the Indian Affairs Commission.

IVA48.2 - Article appearing in Port Angeles Evening News, 8/16/48.

- Reports that William Penn, representing the Quileute Tribal Council, stated that the Quileute Indians object to the plan to sell their Quinault timber in large blocks on a long-term contract.
- Stated that individual Indians are now signing revocations of previous

powers of attorney.

- Explained that the allotment owners do not want to wait 40 to 100 years for their money, and that by selling their allotments individually they can cash in earlier.

- Stated that they have met with R. J. Titus of the Western Forest Industries Association, who will cooperate with them in a program of small tract sales.

IA48.5 - Letter from Superintendent Helander to Commissioner of Indian Affairs, 9/9/48.

- Reports that the Agency office is being flooded with questions for information from allottees and other interested persons concerning the North Quinault sale.

- States that the allottees are becoming impatient with statements that the sale should be made reasonably soon.

- Urges that the consideration of the sale be made without further delay.

IA49.9 - Letter from Acting Commissioner William Zimmerman, Jr., to Congressman Russell Mack, 3/30/49.

- States that during the past few years allottees have urged the sale of the remaining timber so that they might receive an income from their land. Many of the Indians live in very poor homes and have difficulty in sustaining themselves because of age, illness or other conditions. Others desire an income from their lands so that they might improve their social and economic condition. This desire of the allottees to receive income during their lifetime must be given careful and sympathetic

consideration. However, it is difficult to harmonize the desires of many hundreds of Indians to obtain income from their 80-acre allotments with the requirements of sustained yield forest management. After considering several alternatives, the Department feels the best solution is to place the remaining timber into large units under long-term contracts which provide for advance payments.

IR50.1 - Letter from Allottee Marie Wilson to Senator Harry Cain, 3/3/50.
- Complains about the extensions given to Rayonier to sign the contract.
- States that she is in bad health and deep financial distress, and that she wants the money for her timber now while she needs it rather than leave it to posterity.

IR50.3 - Letter from Allottee Mary Petit to the U.S. Dept. of the Interior, 7/25/50.
- Asks whether it would be possible to sell her claim to a party who already has interests on the reservation although he is not Indian.
- States that she and others have been offered the chance to sell their claims at the same price and terms as the timber put up for sale by the Government.
- States that she is badly in need of help and would like to receive something from her timber while she is still alive.

VR51.1 - Resolution of the Quinault Tribal Council signed by Chairman Cleveland Jackson and attested by Secretary Blanche Shale, 4/21/51.
- Resolves that whereas it is evident that the timber in the Crane Creek

and Queets Units can profitably be sold at the present time to the benefit of the members of the Quinault Tribe, that the Commissioner of Indian Affairs be urgently requested to take immediate action to expedite the sales of these units.

IR51.4 - Letter from Superintendent Raymond Bitney to Area Director, 5/3/51.

- States belief that the sale of both Crane Creek and Queets are an absolute necessity for several reasons, some of which are: (1) the individual needs of the Indian allottees remain paramount. Already one-third of the original allottees have died without realizing any of the benefits for which the allotments were intended. (2) the tribal council and many members of the tribe who have been previously antagonistic toward the sales are now in full accord with the plans for proceeding with such sales. Failure to go through with the proposal might restore the feelings of suspicion and antagonism.

IR51.7 - Correspondence with Allottee Elmer Wilson, explaining to him why his timber has not yet been sold.

IA54.5 - Letter from Commissioner Glenn Emmons to Congressman Russell Mack, 4/15/54.

- Refers to letter of April 5 in which was enclosed a letter by Mrs. Anna Green Padget, which concerned her desire to sell her timber on the Quinault Reservation.

- States that the Office realizes that the policy being pursued does not meet the natural desire of some allottees for an immediate income from

the sale of their timber, but that policy is presently being reviewed critically to determine whether it should be modified.

IQ54.1 -

(a) Letter from Allottee Mrs. Vernita B. Edwards to Senator Guy Cordon, 4/12/54.

- States that she has an allotment in the Queets Unit and requests that the Commissioner of Indian Affairs be asked to either put this timber up for sale at the present time or to allow the allottees to sell their own timber.

- States that she has bona fide buyers now who would buy both land and the timber, or just the timber.

(b) Letter from Commissioner Glenn Emmons to Senator Guy Cordon, 4/27/54.

- States that subsequent to the attempted sale of the Queets Unit in 1949 the Indian Office has been attempting to devise a plan for reoffering the entire block or of subdividing it and offering the smaller blocks. More recently the office has been making a critical review of the present policy governing the granting of patents in fee in order to determine whether a plan can be devised for granting such patents without blocking access to the removal of timber from trust lands lying behind them. A satisfactory solution to the problem has not yet been found.